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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 573

UNITED STATES OF AMERICA, PETITIONER

LESTER PACKER

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

**PETITION FOR CERTIORARI FILED JANUARY 25, 1953
CERTIORARI GRANTED MARCH 13, 1953**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. —

UNITED STATES OF AMERICA, PETITIONER,

VS.

LESTER PACKER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

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Order allowing certiorari

1 United States District Court, Southern District
of New York

UNITED STATES OF AMERICA, PLAINTIFF

against

LESTER PACKER, DEFENDANT

STATEMENT UNDER RULE 15 (b)

1. This criminal proceeding was commenced on the 19th day of November 1951 by filing of an Indictment.
2. The Plaintiff is United States of America.
3. The Defendant is Lester Packer.
There has been no change of parties.
4. Defendant pleaded not guilty on November 27, 1951.
5. Defendant was arrested November 5, 1951.
6. Bail of \$1,000. was taken before a U. S. Commissioner upon arrest and was renewed November 27, 1951 by the Court and continued until date of sentence.
7. The trial took place March 26, 1952.
8. Judgment was entered April 2, 1952.
9. Notice of Appeal was filed April 9, 1952.
10. Defendant was tried before Judge McGohey who on April 2, 1952 sentenced defendant to 4 years for violation of the 1948 draft Act. Defendant claimed he was a Conscientious Objector to war.

2 United States District Court, Southern District of New York

[Title omitted]

INDICTMENT

The Grand Jury charges:

1. On or about the 5th day of November, 1951, at the Southern District of New York, LESTER PACKER, the defendant did unlawfully and knowingly fail and neglect to perform a duty required of him under and in execution of the Universal Military Training and Service Act, and the Rules and Regulations duly made pursuant thereto, in that at the time and place aforesaid, the defendant did fail and neglect to take one step forward, after it had been determined that the defendant was fully qualified for induction, and which would have constituted the defendants' induction into the

Armed Forces of the United States (Title 50, Appendix, Section 462, United States Code).

A TRUE BILL.

B. BARTON,
Foreman.

Plea of Not Guilty, November 27, 1951—Defendant pleads Not Guilty.

MYLES J. LANE,
United States Attorney.

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In United States District Court

AFFIDAVIT AND NOTICE OF MOTION TO INSPECT F. B. I. REPORT
January 2, 1952

SIR:

PLEASE TAKE NOTICE that upon the indictment, the plea of not guilty, the annexed affidavits of Lester Packer and Herman Adlerstein, both duly verified the 31st day of December 1951, and upon all previous proceedings had herein, the undersigned will move this Court, to be held in Room 318 in the United States Court House, Foley Square, New York, N. Y., on the 7th day of January 1952 at 10:30 in the forenoon, or as soon thereafter as counsel can be heard, for an Order directing Edward Scheidt, Agent in charge of the New York Office of the Federal Bureau of Investigation, to produce for examination, inspection, and copying the Report of the Federal Bureau of Investigation, which was submitted to and used by Jackson A. Dykman, Hearing Officer, in the investigation and determination of the classification of defendant, pursuant to the Selective Service and Training Act of 1948, upon his appeal from the classification of the Local Board, and that said Report of the Federal Bureau of Investigation, having been subpoenaed, be produced for examination, inspection, and copying in the Office of the United States Attorney before trial, or at such other place, and at such time as may be fixed by the Court, and for such other and further relief, as to the Court may seem just and proper.

Dated New York, January 2, 1952.

Yours etc.,

HERMAN ADLERSTEIN,
Attorney for Defendant,
Address:

To: MYLES LANE,
United States Attorney.

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In United States District Court

AFFIDAVITS IN SUPPORT OF MOTIONS

STATE OF NEW YORK,

County of Kings, ss:

LESTER PACKER, being duly sworn, deposes and says that he is the defendant herein; that he is charged with a violation of the Selective Service Act of 1948, in that he refused to take one step forward for purposes of induction.

That defendant has caused a subpoena duces tecum to be served on the Federal Bureau of Investigation in New York, for the purpose of producing a Report it made to Hon. Jackson A. Dykman, Hearing Officer, and used by said Hearing Officer, in making his Report for the purposes of classification.

That defendant is a Conscientious Objector to war, and he claims that he was improperly classified and should have been classified 4-E instead of 1-A; that the Report of the Hearing Officer has made a wrong conclusion, arbitrarily and without basis, that defendant could not have derived his opposition to war from the Hebrew Religion, although the Report of the Hearing Officer states that defendant was trained in his early years in the Hebrew Religion.

That the Hearing Officer cites the Report made by the F. B. I. after its investigation of defendant, and that the Report of the Hearing Officer indicates that there is material evidence in the F. B. I. Report, which will aid the defense herein, to show that he was a sincere objector to war, and that this stemmed from Religious Training and Belief.

That the matter contained in the F. B. I. report is necessary to prove defendant's case, in which he will show thru said F. B. I. Report that he should have been classified in 4-E and not in 1-A, and that, therefore, said F. B. I. Report becomes necessary and material to defendant's case.

That said F. B. I. Report was not included in defendant's cover sheet by the Local Draft Board, and that, for that reason, defendant has not been able to see said F. B. I. Report in aid of his preparation for trial.

That, under the Draft Regulations, the said F. B. I. Report should have been included in the defendant's cover sheet by the Local Board, as there is a provision that all papers used for classifying purposes shall be put into a registrant's cover sheet; that the omission of this Report from the cover sheet makes it necessary to examine the said Report before the trial herein.

WHEREFORE defendant respectfully requests that this Court grant an Order directing that the Report of the Federal Bureau of Investi-

gation, used before Jackson A. Dykman, the Hearing Officer, for the purpose of determining the proper classification of defendant pursuant to the Selective Service Act of 1948, be produced for inspection and copy, before the trial herein, at the office of the United States Attorney, or at such other place, as the Court may direct, and for such other and further relief, as to the Court may seem just and proper.

Sworn to December 31, 1951.

LESTER PACKER,
(Signed) Lester Packer.

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In United States District Court

AFFIDAVITS CONTINUED

STATE OF NEW YORK,
County of New York, ss:

HERMAN ADLERSTEIN, being duly sworn, deposes and says that he is an Attorney for the Defendant herein.

That defendant is charged with a Selective Service Violation and has pleaded "not guilty".

That defendant contends that he was not properly classified, and that he should have been put in 4-E.

Defendant expects to show that the conclusions of Jackson A. Dykman, Hearing Officer, who recommended the 1-A classification of defendant, was arbitrary, without basis in fact, and contrary to the evidence and religion of defendant.

That it is necessary and material to examine the Report of the F. B. I. made to classify defendant, as there is matter in said Report, which should help defendant at the trial, according to the references contained in the Report of the Hearing Officer.

That a subpoena duces tecum has been served on the New York Office of the F. B. I. to produce said Report at the trial, and a motion is pending to quash said subpoena.

That this motion is made pursuant to Rule 17(C) which permits inspection before trial.

That said F. B. I. Report is not otherwise available to defendant, as it has been omitted from defendant's cover sheet by the Draft Board, altho it was used in his classification.

That no previous application has been made for this or similar relief, and that, in order to advance the cause of justice in this case, the said Report of the F.B.I. should be produced at the trial, in aid of the defense.

WHEREFORE, it is respectfully requested that the application of defendant for the production and inspection of the F. B. I. Report herein before trial be granted:

Sworn to December 31, 1951.

HERMAN ADLERSTEIN.

In United States District Court

ORDER TO SHOW CAUSE—December 14, 1951

Upon the annexed affidavit of Louis Grossman, Assistant United States Attorney, verified the 14th day of December 1951, and upon the indictment filed herein, let the defendant, Lester Packer, or his attorney, Herman Adlerstein, show cause at a term of this court, Room 318, United States Court House, Foley Square, New York, New York, on the 17th day of December 1951 at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made herein quashing the subpoena served on December 13, 1951 upon Edward Scheidt, Agent in Charge of the New York Office of the Federal Bureau of Investigation, requiring the production of a certain report, and for such other and further relief as to this Court may seem just and proper.

Sufficient reason appearing therefor, let service of a copy of this order to show cause, together with a copy of the annexed affidavit, on the attorney for the defendant, on or before 6:00 P. M.,
8 December 14, 1951, be deemed sufficient service.

Dated: New York, N. Y. December 14, 1951.

DAVID N. EDELSTEIN,
U. S. D. J.

In United States District Court

AFFIDAVIT SUBMITTED WITH ORDER TO SHOW CAUSE

STATE OF NEW YORK, County of New York,
Southern District of New York, ss:

LOUIS GROSSMAN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Southern District of New York, and am familiar with the above entitled action.

2. An indictment was filed herein charging the above named defendant, Lester Packer, with failing to take one step forward, which would have constituted his induction into the armed forces of the

United States, in violation of Title 50, Appendix, Section 462, United States Code. This case has been tentatively set for trial on December 17, 1951.

3. On December 13, 1951 Edward Scheidt, Agent in Charge of the New York Office of the Federal Bureau of Investigation, was served with a subpoena duces tecum in the above named action, which subpoena directed that he produce the report made by the Federal Bureau of Investigation to the Department of Justice in the matter of the appeal and classification of Lester Packer, the above named defendant. A copy of said subpoena is annexed hereto and marked Exhibit A.

4. At the request of the above named defendant, his entire file was made available to his counsel. Said file contains all the papers which he is entitled to have under the Selective Service Act of 1948.

5. The FBI report sought by the defendant herein is confidential and cannot be produced as requested, pursuant to Attorney General's Order No. 3229, issued under the authority of Title 5, United States Code, Section 22.

6. Since the trial of this action, now scheduled for December 17, 1951, will be adjourned for a short period of time until the determination of this application, no injury will result to the defendant by the granting of this order to show cause.

7. An order to show cause is sought at this time rather than a regular notice of motion due to the fact that time does not permit the service of such a motion.

No previous application for this or similar relief has been made in the premises to this court.

Sworn to December 14, 1951.

LOUIS GROSSMAN.

EXHIBIT A TO AFFIDAVIT

The President of the United States of America

To Edward Scheidt, Agent in Charge of the New York Office of the Federal Bureau of Investigation.

(L. S.)

Greeting:

We command you, that all business and excuses being laid aside you appear and attend before Hon. Samuel H. Kaufman, Judge of the United States District Court, in room 318 of the Federal Building at Foley Square, New York, N. Y. on the 17th day of December 1951 at 10:30 o'clock in the forenoon to testify and give evidence in a certain action now pending

undetermined in the District Court of the United States for the Southern District of New York, between United States of America, Plaintiff and Lester Packer, Defendant, on the part of the defendant and that you bring with you and produce at the time and place aforesaid, a certain Report made by the Federal Bureau of Investigation to the Department of Justice, in the matter of the appeal and classification of Lester Packer, made pursuant to the Selective Service and Training Act of 1948, and used to determine the appeal of Lester Packer heard before Hon. Jackson A. Dykman, Hearing Officer, for a classification of 4-E, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto.

Witness the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, the 12th day of December 1951.

WILLIAM V. CONNELL,
Clerk.

HERMAN ADLERSTEIN,
Attorney for Defendant.

11 In United States District Court

AFFIDAVITS IN OPPOSITION TO MOTION TO QUASH SUBPOENA

STATE OF NEW YORK,
County of New York:

Lester Packer, being duly sworn, deposes and says that he is the defendant herein.

That he has authorized his Attorney herein to subpoena the Report of the F. B. I., mentioned in the moving papers, on the ground that such Report is material and necessary to his defense in this prosecution against him, and that such authorization is annexed hereto as Exhibit "A".

That deponent expects in good faith to use said F. B. I. Report at the trial, to prove that he acted sincerely in making claim for a 4-E Classification under the 1948 Selective Service Act, that he intends to show by said Report that he had Religious Training which taught him to be opposed to war in all forms, that there is no basis for the classification given deponent, and that the conclusions of the Hearing Officer were contrary to law and the facts.

That by the F. B. I. Report deponent expects to show that the following conclusions of the Hearing Officer, made in his Report, are erroneous:

"Registrant received religious training in a faith which is not opposed to military service and it is quite speculative to assume that such training forms the basis of unwillingness to participate in war in any form."

12 "The present case in the opinion of the Hearing Officer is one in which the registrant has failed to establish by sufficient evidence that his opposition to participation in war arises from religious training and belief."

That the use of said Report on the trial is therefore material to show that deponent complied with the 1948 Draft Law and Regulations issued thereunder, to be entitled to a 4-E Classification.

That Peyton Ford, Assistant Attorney-General, in an advisory opinion, showed that defendant was opposed to war, but that his opposition was based on philosophical grounds or a personal moral code; that this shows that Mr. Ford had two different ideas, and that he was not sure himself; that both of these conclusions are wrong, and that the F. B. I. Report will show that.

That defendant proved, without contradiction, that he received Religious Training, that he believes in God, that he is against killing and war, and that his Religious Training was both significant and affected his subconscious.

WHEREFORE IT IS RESPECTFULLY REQUESTED THAT the motion to quash the subpoena duces tecum herein be denied, that the case be adjourned until the motion is decided, and for such other and further relief, as to the Court may seem just and proper.

LESTER PACKER.

Verified December 17, 1951.

STATE OF NEW YORK,
County of New York, ss:

13 Herman Adlerstein, being duly sworn, deposes and says that he is the Attorney for the Defendant herein, and that the motion to quash the subpoena should be denied.

That the Report of the Federal Bureau of Investigation, which has been subpoenaed is material to the defense, as it has an important bearing in showing the sincerity of the defendant's convictions against war, and also will show that defendant received religious training which is the basis of his opposition to war.

That the Report of the F. B. I. was quoted from by the Hearing Officer in his Report, and that defendant believes that said Report

will show that the conclusions of the Hearing Officer were not based upon the facts and were erroneous in law.

That the law permits such documents, as the F. B. I. Report to be subpoenaed by a defendant in a criminal action, particularly, as in this case, when the Report was part of the basis of the administrative determination.

That the following points are made to uphold the validity of the subpoena duces tecum herein:

1. The decisions of this Circuit allow it in criminal cases, lest a defendant be convicted, when a document in possession of the Government might prove him innocent.

2. The Selective Service Regulations permit subpoena of Records used in defendants' classification, (Sec. 1670).

3. The Report of the F. B. I. should have been included in defendant's cover sheet under Selective Service Regulations and Due Process of Law, and the Government's affidavit on this motion was not correct, in saying that the file contains all the papers to which defendant is entitled.

4. That there are four types of document, as to production of which, question has been raised in Court proceedings. These are known as "secret, top-secret, confidential, and restricted." Subpoena of the last two types has been recognized as valid. In this case the United States Attorney has called the Report of the F. B. I. "confidential."

5. An Executive Order, which does not allow the use of a document in Court, because such document is confidential, is not valid, when such Order is in contravention of the law. The Rules of this Court allow the subpoena, the Selective Service Regulations allow it, and, the Due Process clause of the Constitution allows it.

WHEREFORE, deponent joins in the request that the motion to quash the subpoena herein be denied.

HERMAN ADLERSTEIN.

Verified January 2, 1952.

(Exhibit "A", used in opposition to the motion, is omitted from the Record on Appeal. It is an authorization to the Attorney for Defendant to subpoena the FBI Report.)

In United States District Court

ORDER ON MOTION FOR INSPECTION

Motion denied. See opinion of Judge Conger, filed January 31, 1952—U. S. v. John Romano, etc., C 135-135- 2/29/52.

HENRY W. GODDARD,

U. S. D. J.

In United States District Court

ORDER ON MOTION TO QUASH SUBPOENA

Motion granted. See opinion of Judge Conger of January 31, 1952,
U. S. v. John Romano, C 135-135, etc.

HENRY W. GODDARD,
U. S. D. J.

2/29/52.

15 United States District Court Southern District of New York

STENOGRAPHERS' MINUTES

Before:

Hon. JOHN F. X. McGOHEY, District Judge.

New York, March 26, 1952,
11:00 o'clock a. m.

APPEARANCES:

MYLES J. LANE, Esq., United States Attorney, for the Government;

By LOUIS J. GROSSMAN, Esq., SILVIO J. MOLLÓ, Esq., and DANIEL H. GREENBERG, Esq., Assistant United States Attorneys.

HERMAN ADLERSTEIN, Esq., Attorney for Defendant.

16 Mr. GROSSMAN: Before we start, on talking to the attorney for the defendant, he advised me that the defendant has consented to a waiver of a jury trial. Accordingly, I have prepared a stipulation which I would like your Honor to approve as to the form, and also have your Honor advise the defendant of his constitutional rights.

The COURT: Is he represented by counsel?

Mr. GROSSMAN: He is represented.

The COURT: Isn't that the purpose of his counsel, to advise him?

Mr. GROSSMAN: We also would like your Honor to approve the stipulation.

The COURT: Have you shown it to your adversary?

Mr. ADLERSTEIN: I have agreed to stipulate to waive the jury.

The COURT: Have you seen the particular form?

Mr. ADLERSTEIN: This is consented to, as to form.

The COURT: Will you have it signed?

(Defendant signs stipulation.)

Mr. GROSSMAN: Will your Honor approve that now (handing to Court)?

The COURT: Mr. Adlerstein, have you discussed this with your client before coming up here?

Mr. ADLERSTEIN: I have, your Honor.

17 The COURT: Have you explained to him exactly what he is doing by waiving his right to trial by jury?

Mr. ADLERSTEIN: Well, I did explain to him what he was doing. I told him he had a right to a jury trial and I explained to him that he could try the case by the jury or by the Court without a jury, and I told him why I thought he should try it without the jury.

The COURT: You did so advise him?

Mr. ADLERSTEIN: Yes, your Honor.

The COURT: Very well.

Will you stand up?

(The defendant arose as requested.)

The COURT: You have heard what your attorney just said?

The DEFENDANT: Yes, sir.

The COURT: And you have retained this attorney, yourself?

The DEFENDANT: That is right, your Honor.

The COURT: He hasn't been assigned to you by the Court?

The DEFENDANT: That is right.

The COURT: You understand now that by signing this waiver, approved by the Court, you will now submit to the Court alone the question of any fact that has to be determined, as well as questions of law?

18 The DEFENDANT: That is right, your Honor.

The COURT: You understand that?

The DEFENDANT: Yes.

The COURT: And, acting on the advice of your counsel and understanding exactly what he has told you, you freely stipulate to waive your rights to trial by jury?

The DEFENDANT: That is right, your Honor.

The COURT: Very well. I will approve it.

Mr. GROSSMAN: At this time, your Honor, I would like to offer the stipulation waiving the jury, as Government's Exhibit 1, so it will be part of the record in this case.

The COURT: Very well. It is received.

(Marked Government's Exhibit 1.)

Mr. GROSSMAN: At this time, your Honor, I would like to make a statement for the record in connection with a conference I have had with Mr. Adlerstein, whereby he has consented to concede certain matters, which would serve to expedite this trial and to

prevent the Government from calling a group of witnesses; namely, the first concession is that the Lester Packer named in the indictment here is the same individual now sitting at counsel table, and that on or about the 5th day of November, said Lester Packer appeared at the induction station and refused to take the one step forward.

19 Q I believe that is conceded, Mr. Adlerstein?

Mr. ADLERSTEIN: That is conceded.

Mr. GROSSMAN: And that this event took place—

The COURT: Precisely what do you mean by that expression, "one step forward"? I know it is used in the decision, but tell me what you mean by it.

Mr. GROSSMAN: Yes. It means, briefly, that pursuant to the regulations there are various administrative steps allowed to Selective Service registrants, and in the cases of conscientious objectors, they are given the right to certain hearings and certain appeals.

The COURT: Tell me, what is the one step forward that it is now being conceded that this man did not take? That is what I want to know.

Mr. GROSSMAN: That is, he reports for induction pursuant to a notice to proceed, and that is his last administrative step.

The COURT: Do you mean to say that he did not report for induction?

Mr. GROSSMAN: He did not report for induction.

The COURT: What is it he refused to do?

Mr. GROSSMAN: At the induction station they call the names out and ask them to take the one step forward for the purpose of swearing into the armed forces of the United States. That is the last administrative step which he refused to take.

20 The COURT: Very well.

Mr. GROSSMAN: A further stipulation is to be made by the attorney for the defendant, namely, that the cover sheet and papers contained therein is the whole Selective Service file of the defendant, Lester Packer.

Mr. ADLERSTEIN: I will concede that that is the Selective Service file, and I will consent that it go into evidence.

Mr. GROSSMAN: And that it contains all papers that were submitted by this defendant in connection with all of his hearings and all of his processes prior to his being ordered for induction.

Mr. ADLERSTEIN: That is correct.

Mr. GROSSMAN: I would like this marked in evidence, your Honor, as Government's Exhibit 2.

The COURT: It may be received.

(Marked Government's Exhibit 2.)

Mr. GROSSMAN: I believe the defendant has also consented to stipulate that all of the papers contained in this file may be put in evidence individually for the Court's perusal so that—

The COURT: Isn't the whole file now in evidence?

Mr. GROSSMAN: Yes, your Honor, but we would like to show the various steps that were taken.

21 The COURT: Yes, you may do that. But that is merely a matter of procedure. Everything in that file, I understand, was consented to and received in evidence without objection.

Mr. ADLERSTEIN: It isn't the practice—

The COURT: It is not a question of the practice; it is a practice of what you have just conceded.

Mr. ADLERSTEIN: That is right.

The COURT: You do concede that everything in that file relates to your client, sitting here now beside you in the courtroom.

Mr. ADLERSTEIN: That is right.

The COURT: And you now raise no objection to the admission in evidence of everything in the file?

Mr. ADLERSTEIN: That is right.

The COURT: Very well.

Mr. GROSSMAN: Merely, your Honor, with reference to the procedure of bringing each one of these papers to your attention—

The COURT: Well, once a paper is in evidence, counsel, you can read any part of it, and it is all before me. All you have to do is direct my attention to it. It need not be marked separately unless, for some reason, you desire it to be, and then it will be marked Exhibit 1-A, B, C, or whatever it is—or Exhibit 2; it is Exhibit 2, isn't it?

22 OFFERS IN EVIDENCE

Mr. GROSSMAN: That is right, your Honor.

The first paper that I should like to call your attention to, and the one I will constantly be referring to, is the Selective Service questionnaire, SS Form 110, of this registrant, which is really one of the first papers filled out and signed by him.

Mr. ADLERSTEIN: That isn't 110. I think it is 100, isn't it?

Mr. GROSSMAN: 100. I am sorry. 100. I am corrected. SS Form 100.

This questionnaire was mailed to the registrant on 7/19/49, and received back from him on August 29, '49.

In connection therewith, I would especially like to call your Honor's attention to Series 14, which is a series whereby an individual who is conscientiously opposed to war may sign his name and state so.

However, in this questionnaire, the registrant, Lester Packer,

didn't sign Series 14, and made no claim at that time that he was conscientiously opposed to war.

I would like this paper marked as Government's Exhibit 2-A, if your Honor please?

(Marked Government's Exhibit 2-A.)

The COURT: This is Series what?

Mr. GROSSMAN: Series 14, your Honor, on next to the 23 last page.

The next paper, which I would like marked as Government's Exhibit 2-B, is a simple statement sent to the registrant, containing certain questions which he did not answer in his original questionnaire, and the board, in order to have a complete questionnaire, sent him the additional form on August 29, 1949, and received it back on September 2, 1949.

(Marked Government's Exhibit 2-B.)

Mr. GROSSMAN: The next document, which I offer in evidence as Government's Exhibit 2-C, is SS Form No. 223, which is an order to report to the armed forces for physical examination. The date of mailing was September 27, 1950. This defendant, Lester Packer, was ordered to report at eleven a. m. on October 4, 1950.

(Marked Government's Exhibit 2-C.)

Mr. GROSSMAN: At this time, if I may, your Honor, I would like to call your attention to the fact that on the back of the questionnaire, on the last page of the questionnaire—

The COURT: Which questionnaire?

Mr. GROSSMAN: Government's Exhibit 2-A. There is listed the minutes of all actions taken by the local board and appeal board in connection with this registrant's classification, and on October 20, 1949, there is a notation that a Form 110 was sent to the 24 registrant.

Now, that Form 110—there is also a notation prior to that that he was classified 1A by the local board on September 28, '49; and sent Form 110. 110 is merely a postcard, of which a duplicate is not kept in the file, advising him of his classification and advising him of his rights in connection therewith, of his rights to a hearing within ten days, or to an appeal within ten days. Such notice was sent to him pursuant to the endorsement on the back of the questionnaire.

The COURT: Is that disputed?

Mr. ADLERSTEIN: Not disputed, your Honor.

The COURT: Very well.

Mr. GROSSMAN: Now come to Government's Exhibit 2-D, which is a certificate of acceptability, which was sent to the registrant

on October 4, 1950, which indicates that he was found acceptable for induction into the armed services.

(Marked Government's Exhibit 2-D.)

Mr. GROSSMAN: Next, your Honor, I offer Government's Exhibit 2-E, which is a letter dated October 20, 1950—

The COURT: This is 2-E?

Mr. GROSSMAN: 2-E, letter dated October 20, 1950, signed by the registrant, or defendant in this case, in which he requests, for the first time, that he be sent a Special Form 150 for conscientious objectors.

I might at this time also mention to your Honor that had the registrant indicated in his original questionnaire that he was a conscientious objector, by signing Series 14, he would automatically have been sent a new questionnaire, which is known as SS Form 150, or a special form for conscientious objectors. Not having done so in his original questionnaire, he makes the request in this letter, which reads as follows:

"Dear Sir: After long and careful deliberation I have reached the conclusion that I am opposed to war in all forms, and therefore request that I be put in the classification 4E and that I be sent Special Form 150 for conscientious objectors. Very truly yours, Lester Packer."

And he gives his Selective Service number.

This letter was received at the local board on October 23, 1950.

The COURT: What is the date of it?

Mr. GROSSMAN: October 20th, the letter is dated; a registered letter.

(Marked Government's Exhibit 2-E.)

Mr. GROSSMAN: The last page of his questionnaire now indicates, your Honor, that on October 23rd, pursuant to his request, the Form 150 was sent to him, and I offer now as Government's Exhibit 2-F, the completed Form 150 which was filled out, signed by the registrant, with additional statements contained therein, and returned to the local board on October 31, 1950. This is known as Special Form for Conscientious Objectors, SS Form 150.

(Marked Government's Exhibit 2-F.)

Mr. GROSSMAN: My next offer is Government's Exhibit 2-G, a copy of a letter dated November 2, 1950, addressed to the registrant from the clerk of the local board, which reads as follows:

"Mr. LESTER PACKER, 1478 Walton Avenue, Bronx, New York. Dear Sir: After reviewing your case on November 1, 1950, the

Board has decided that the fact submitted does not warrant a re-opening of your classification. Yours truly, Helen Middlevitch, Clerk."

(Marked Government's Exhibit 2-G.)

Mr. GROSSMAN: Now offer as Government's Exhibit 2-H, a letter dated November 7, 1950, signed by the registrant and addressed to him—

The COURT: What is that date?

Mr. GROSSMAN: November 7, 1950, signed by the registrant and addressed to his local board, which reads as follows:

27 "Dear Sirs: I am in receipt of your letter of November 2nd.

It has been brought to my attention that I am no longer eligible to appeal for a hearing. Although I recognize that I do not have the legal right to a hearing due to the lapse in time since registration, I do, however, feel I should be allowed the opportunity of a hearing inasmuch as I have been unaware of my right to appeal after this period of time. I feel that if I am allowed the opportunity to present my case personally before the hearing officer, it will enable you to have a clearer and more comprehensive picture of the entire case. I shall also welcome a thorough investigation by the FBI so that all the details may be entered into the record. I hope the board will allow me favorable consideration in view of the fact that I have been unaware of the procedure in making an appeal.

"Very sincerely, Lester Packer"—and his Selective Service number.

This letter was received by the board on November 9, 1950.

(Marked Government's Exhibit 2-H.)

Mr. GROSSMAN: My next offer is Government's Exhibit 2-I, a copy of a letter dated November 16, 1950, signed by the clerk of the local board, and addressed to the registrant, which reads as follows—

28 The COURT: What is the date, again?

Mr. GROSSMAN: November 16, 1950.

"Mr. Lester Packer, 1478 Walton Avenue, Bronx, New York. Dear Sir: The Board reviewed your case on November 16, 1950, and it was their decision that your request for an interview is denied. Yours truly, Helen Middlevitch, Clerk."

(Marked Government's Exhibit 2-I.)

Mr. GROSSMAN: My next offer is Government's Exhibit 2-J, Form of Order to report for induction. It is SS Form No. 252, and it is dated November 17, 1950, and it is addressed to the registrant,

Lester Packer, and he is ordered to Report for induction on the 6th day of December, 1950.

I note also that this copy of the Order to Report for induction has, marked across it, "cancelled", that it was subsequently cancelled. Just to keep the entire story, I am introducing it:

-(Marked Government's Exhibit 2-J.)

Mr. GROSSMAN: I would now like to call your Honor's attention to the fact that the rear page of this questionnaire contains a notation dated 11/22/50—November 22, 1950—that the file was sent to Major Akst—he is the legal consultant of Colonel Cobb, Director of Selective Service System of New York Headquarters, per telephone of 11/22/50.

I now offer as Government's Exhibit 2-K, a letter signed by Candler Cobb, New York City Director of Selective Service System. This letter is dated November 24, 1950; was received by the local board on November 27, 1950.

The letter reads as follows:

"Selective Service System. Local Board No. 22. 1910 Arthur Avenue, Bronx, New York. Re Lester Packer, 50-22-29-28L. Gentlemen: The cover sheet of the above-named registrant is herewith returned. Examination of the facts contained therein discloses no irregularity on the part of the Local Board in its classification of the registrant. It has always been the practice of this headquarters to permit all registrants who claim to be conscientious objectors, to have their cases appealed to the Appeal Board and possibly thereafter be forwarded to the United States Attorney for consideration by the hearing officer. This is done so that all registrants who claim to be conscientious objectors may be processed in the same way and be afforded all their rights, which may have elapsed or not, before any final determination is made in their case.

39 "Even though the registrant failed to sign Series 14 of the questionnaire referring to conscientious objectors, the file does disclose that the Board, during October, did supply the registrant with special form for conscientious objectors, SS Form 150, which he completed and returned to the Local Board on October 31, 1950. This may be considered indicative on the part of the Local Board to reopen and reconsider the registrant's claim anew. If this could be considered a reopening, then, pursuant to the regulations, the registrant should have been mailed a new notice of classification, SS Form No. 110, and thereafter his rights to appeal could have been extended an additional ten days.

"Rather than sending out a new SS Form No. 116 at this time it is suggested that his notice of induction be cancelled and that his case be sent to the Appeal Board, on the questions of objection to combatant and non-combatant duty as a conscientious objector.

Since the records indicate that he is to report for induction on December 6th, it is requested that you advise this office before that date as to what action is taken by your Board.

"Sincerely yours, (signed) Candler Cobb, New York City Director."

(Marked Government's Exhibit 2-K.)

Mr. GROSSMAN: I note, your Honor, where it says, "Form 116," in the last paragraph, it is a typographical error; it should be 110.

I now offer as Government's Exhibit 2-L a copy of a letter dated December 5, 1950, which was sent to the registrant, signed by the clerk of the local board. It reads as follows:

"Mr. Lester Packer: 1478 Walton Avenue, Bronx, New York. Dear Sir: This is to advise you that your induction, scheduled for December 6, 1950, has been cancelled until further notice. Yours truly, Helen Middleditch, Clerk."

(Marked Government's Exhibit 2-L.)

Mr. GROSSMAN: I now call your Honor's attention to the minutes on the back of the registrant's questionnaire, to a few notations, the first one dated 12/6/50, which indicates that the board and the AA, which indicates the appeal agent, reviewed the case.

There is another notation, dated 12/7/50, which says:

"Sent to board of appeals;" indicating that the registrant's file or his cover sheet was sent to the board of appeals.

The next notation, dated January 12, 1951, reads as follows:

"Appeal board panel No. 4 has reviewed the record, and determined that the registrant is not entitled to classification in Class 4E and is not eligible for classification in a class lower than 4E and has directed that file be transmitted to the Department of Justice for an advisory recommendation pursuant to section 1626.25-A-4, Selective Service regulations."

Your Honor, I now offer as Government's Exhibit 2-M, two copies which are contained in the file, of the same letter, a letter of the Chairman of the Appeal Board to Hon. Irving H. Saypol, U. S. Attorney, which letter is dated January 16, 1951, and reads as follows:

The COURT: Without reading it, what does it do, ask for an opinion?

Mr. GROSSMAN: It merely sends it on the usual course to have it referred for a hearing.

(Marked Government's Exhibit 2-M.)

Mr. GROSSMAN: I might state, your Honor, that when the case is received at the U. S. Attorney's Office, it is, of course, referred out to a hearing officer, and in this particular case the hearing officer was one Jackson Dykman.

The next offer is Government's Exhibit 2-N, letter dated April 9, 1951, addressed to Mr. Dykman, and signed by the registrant, which reads as follows:

"Dear Mr. Dykman: I am in receipt of a notice for a hearing to be held on May 7th at 9:30 a. m. I would appreciate your notifying me as to the nature and character of any evidence which is
33 unfavorable and tends to defeat my claim for exemption.

"Thanking you for your kind efforts, I remain, yours truly,
Lester Packer."

(Marked Government's Exhibit 2-N.)

Mr. GROSSMAN: I now offer as Government's Exhibit 2-O a statement dated May 4, 1951, and signed by two individuals, Arthur W. Miller and Philip S. Liebman. The statement reads as follows:

"To whom it may concern: This is to verify the fact that Lester Packer was known to be conscientiously opposed to war before registration for Selective Service and we believe his convictions to be of sincere nature. (Signed) Arthur W. Miller, Philip S. Liebman."

That was handed in before he had his hearing before Hon. Jackson Dykman.

(Marked Government's Exhibit 2-O.)

Mr. ADLERSTEIN: Could I interrupt, your Honor?

The COURT: Just a minute, please.

Yes?

Mr. ADLERSTEIN: In regard to Government's Exhibit 2-N, I would like to have the Government offer in evidence the reply which Jackson Dykman made to that letter.

Mr. GROSSMAN: I gladly would, except it is not part of the file. The file never contained a copy.

34 Mr. ADLERSTEIN: Could I offer it, then, at this time?

Mr. GROSSMAN: I have no objection.

The COURT: It doesn't seem to make much difference who offers it. If it will complete the story, it ought to be received, and I will receive it.

Mr. GROSSMAN: I have no objection to it, your Honor. I think we ought to mark it Government's Exhibit 3 at this time.

Mr. ADLERSTEIN: No, Defendant's Exhibit A.

(Marked Defendant's Exhibit A.)

Mr. GROSSMAN: I now offer as Government's Exhibit 2-P the report of the hearing conducted by the Department of Justice, pursuant to Section 6-J of the Selective Service Act of 1948, in regard to this defendant, Lester Packer. The report is dated July 14, 1951, and is signed by Jackson A. Dykman, the hearing officer.

(Marked Government's Exhibit 2-P.)

Mr. GROSSMAN: Your Honor, if I may revert back to Defendant's Exhibit A, for the point of clarifying something to your Honor, I would like to state that when a hearing officer gets—

The COURT: Is there anything that you think is not clear? I haven't any doubt about it.

Mr. GROSSMAN: I would like to elaborate on it a bit.

35 The COURT: All right.

Mr. GROSSMAN: At the time the hearing officer receives the case and sends the registrant a notice of the hearing, contained in that notice is a statement that pursuant to regulations, the registrant may inquire, if he desires, what, if any, evidence is unfavorable to him and pursuant to that he made the request, and this is written in answer to it.

I would like to just call to your attention that that was all done pursuant to the regulation.

The COURT: I understand.

Mr. GROSSMAN: I would like to now offer as Government's Exhibit 2-Q a letter from the Department of Justice, dated July 24, 1951, and addressed to the Chairman of Appeal Board Panel No. 4, signed by Peyton Ford, Deputy Attorney General, in which he recommends that the registrant be not classified as a conscientious objector.

(Marked Government's Exhibit 2-Q.)

Mr. GROSSMAN: I would like to now offer as Government's Exhibit 2-R the minutes of the action taken by the appeal board in this case, showing that the appeal board, on August 20, 1951, again classified this registrant 1A by a vote of 4 to 0.

(Marked Government's Exhibit 2-R.)

36 Mr. GROSSMAN: In connection with that, I think we should also mark as the same exhibit the forwarding letter from the appeal board, transferring the file back and indicating their result to the local board.

The COURT: Transferring it back to the local board?

Mr. GROSSMAN: To the local board.

I would like to now offer as Government's Exhibit 2-S a form, SS-Form No. 262, which is an order to report for induction. The

form is dated August 30, 1951, and orders the registrant to report on September 14, 1951.

(Marked Government's Exhibit 2-S.)

Mr. GROSSMAN: I would like to also state to your Honor that on the minutes of the registrant's questionnaire is indicated that on August 24, 1951, a new form, SS Form 110, the postcard which I have heretofore referred to, was sent to the registrant, indicating that he is still in 1A by a vote of the appeal board, 4 to 0.

Next is Government's Exhibit 2-T, a letter dated August 30, 1951, and addressed to General Lewis B. Hershey, Division of Selective Service, Washington, D. C., and signed by the registrant in this case.

In that letter, your Honor, briefly, he goes into why he feels he should have been classified as a conscientious objector at his hearing, which was not done.

37 (Marked Government's Exhibit 2-T.)

Mr. GROSSMAN: Next is Government's Exhibit 2-U, letter dated September 6, 1951, addressed to the registrant by the clerk of the local board, reading as follows:

"Mr. LESTER PACKER, 1478 Walton Avenue, Bronx, New York. Dear Sir: This is to advise you that the Board reviewed your letter of August 30, 1951, and it is their decision that your classification remain unchanged and that you are to report for induction on September 14, 1951, as scheduled."

(Marked Government's Exhibit 2-U.)

Mr. GROSSMAN: Next is Government's Exhibit 2-V, which is a copy of a letter sent to the registrant by Candler Cobb, the New York City Director of Selective Service, and it is dated September 6, 1951, reading as follows:

"Mr. LESTER PACKER, 1478 Walton Avenue, Bronx, New York. Dear Mr. Packer: This will acknowledge receipt of your special delivery registered letter dated August 31, 1951, which I received this morning. You must bear in mind that your case has been before me since last November, which means that I am entirely familiar with the progress of your classification. However, I have again today reviewed the proceedings held on your behalf. I do not feel that that there is any reason for me to intervene in your case. You have had all your procedural rights according to law and regulations, and your classification of 1A was unanimously confirmed by the Appeal Board. Your order for induction will, therefore, stand for September 14, 1951. Sincerely yours, Candler Cobb, New York City Director."

38

(Marked Government's Exhibit 2-V.)

Mr. GROSSMAN: I next call your Honors attention to the notation on the minutes of the Selective Service questionnaire of the registrant, dated 9/10/51, which reads as follows:

"Per telephone conversation with Mr. Wagner"—he is a gentleman at Selective Service Headquarters—"Registrant advised not to report for induction 9/14/51."

Next in the file we find Government's Exhibit 2-W, which is a letter dated September 6, 1951; and addressed to the Director of Selective Service, New York City, signed by Lewis F. Kosch, Chief of the Manpower Division of the Selective Service Division, National Headquarters, in Washington.

It reads as follows: "Dear Col. Cobb. It is requested that the cover sheet of the above-named registrant be forwarded to this headquarters for review."

The Court: Let me see that.

(Mr. Grossman hands document to the Court.)

(Marked Government's Exhibit 2-W.)

39 Mr. GROSSMAN: I would like to now offer two papers as Government's Exhibit 2-X.

One is a letter to the registrant, telling him not to report on September 14th, and that he will be advised in the near future as to what date to report, and the other one is a form, SS Form No. 264, which is a postponement of induction form; namely, from September 14th—he is notified that his induction is postponed until October 16, 1951.

(Marked Government's Exhibit 2-X.)

Mr. GROSSMAN: I would now like to offer a group of letters as Government's Exhibit 2-Y—a group of three letters. One is a letter for the registrant from Washington National Headquarters, signed by Lewis Kosch, advising him that his Selective Service file has been reviewed and that there is no need for further action in his case in order to prevent any injustice.

The next letter is to Colonel Cobb; returning the cover sheet, stating that "after examining the cover sheet, we are of the opinion that there is no need for further action in this case in order to prevent injustice."

And the third letter is from Colonel Cobb, from Selective Service Headquarters, New York, to the chairman of the appeal board, returning the cover sheet to him with copies of the other letters.

(Marked Government's Exhibit 2-Y.)

40 Mr. GROSSMAN: As Government's Exhibit 2-Z, I now offer a letter dated October 9, 1951, addressed to the registrant, from the clerk of the local board, which reads as follows:

"Dear Sir: This is to remind you that you are to report for induction"—

The COURT: What is the date?

Mr. GROSSMAN: October 9, 1951.

"Dear Sir: This is to remind you that you are to report for induction on October 16, 1951, at nine a. m., to 39 Whitehall Street, New York City.

(Marked Government's Exhibit 2-Z.)

Mr. GROSSMAN: I now offer as Government's Exhibit 2-AA, a form dated October 25, 1951, showing that the registrant appeared on October 16, 1951, and was not inducted because he was held as a holdover for November 5, 1951.

It states that: "The above inducted had been made an exception from holdover. It is requested that you direct him to report at 20 Pearl Street, New York, New York, for immediate induction on 5 November 1951, at eight a. m."

(Marked Government's Exhibit 2-AA.)

Mr. GROSSMAN: I might mention, your Honor, that that is because they desire to check him further physically, that that procedure is usually followed.

41 I now offer as Government's Exhibit 2-BB, a letter dated October 26, 1951, addressed to the registrant and signed by the clerk of the local board, which reads as follows:

"Dear Sir: This is to advise you that you are to report to 44 Whitehall Street, entrance 20 Pearl Street, New York City, on November 5, 1951, at eight a. m. for immediate induction."

(Marked Government's Exhibit 2-BB)

Mr. GROSSMAN: With the consent of the defendant, your Honor, I now offer as Government's Exhibit No. 3, a statement dated November 5, 1951, which is the same date the registrant was ordered to report for induction. The statement is signed by William F. Donegan, Jr., Captain, Infantry, Induction Officer at 39 Whitehall Street, New York.

Attached to Captain Donegan's statement is statement he received from the registrant, or defendant in this case, which is also dated 5 November 1951, which reads:

"I refuse to be inducted in the armed forces of the United States," and signed by the defendant, Lester Packer.

(Marked Government's Exhibit 3.)

Mr. GROSSMAN: I might mention, your Honor, that the last notation contained on the back of the Selective Service questionnaire, for the sake of completion, is dated 11/6/51. It reads as follows:

"As per telephone conversation with Mr. Mollo, 11/5, file hand-delivered this date to Foley Square," which indicates that the file was delivered to the U. S. Attorney's Office on that date.

At this point, the Government rests, your Honor.

The COURT: You desire, I am sure, to put in a defense?

Mr. ADLERSTEIN: I do, your Honor.

The COURT: At this time we will take a short recess so you can look over your papers.

Mr. ADLERSTEIN: Would your Honor wait before we recess, so that I can make a motion?

The COURT: No, I prefer you wait until we come back.

We will take a 10-minute recess.

(Short recess.)

MOTION TO DISMISS INDICTMENT AND DENIAL THEREOF

Mr. ADLERSTEIN: If it please the Court, I would like to make a motion at this time.

I move to dismiss the indictment, with acquittal of the defendant, on the following grounds:

The last page of the hearing officer's report, Government's Exhibit 2-P, I believe it is, bears a statement which is contrary to law, made by Jackson A. Dykman, the hearing officer. He made this conclusion:

"Registrant received religious training in a faith which is not opposed to military service, and it is quite speculative to assume that such training forms a basis of unwillingness to participate in a war of any form."

It is our contention that that is an erroneous statement of law and having been used to influence the decision of the appeal board is contrary to Section 6 (j) of the Selective Service Act of 1948, and therefore contained an erroneous statement to the appeal board.

The COURT: In what respect, please?

Mr. ADLERSTEIN: In respect to the fact that it stated that a person trained in the Hebrew faith cannot make a claim as a conscientious objector, or at least that was the effect of this conclusion, and that is contrary to the law as stated in 6 (j) of the Draft Law of 1948.

And also on the further ground that Defendant's Exhibit A shows that the hearing officer said "there was nothing unfavorable to your

claim except that you stated you are not a member of a religious sect or organization."

And that is also contrary to provisions of Section 6(j) of the Draft Law of 1948, known as the Selective Service and Training Act of 1948.

THE COURT: Let me see the section. Do you have it there?

44 (Mr. Adlerstein hands document to the Court.)

THE COURT: Have you any other ground that you wish to urge in support of the motion?

MR. ADLERSTEIN: Not at this time. I reserve other grounds until after my proof is in.

THE COURT: Have you any other grounds than this to move now, at the end of the Government's case? That is what I mean.

MR. ADLERSTEIN: No, sir.

THE COURT: Very well.

Motion denied.

MR. ADLERSTEIN: Exception.

Your Honor, I prepared a fairly lengthy trial memorandum, and I would appreciate it if your Honor would accept it.

THE COURT: Yes.

ISADORE B. HOFFMAN, called as a witness on behalf of the defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION.

By Mr. ADLERSTEIN:

Q. You are a duly ordained rabbi?

A. I am.

Q. Will you tell us what your training has been to become ordained as a rabbi?

45 A. Yes. In addition to preliminary and elementary Jewish studies, I went through the regular course of instruction and preparation for the rabbinate in the Jewish Theological Seminary of America, which is situated here in New York.

I was ordained by the seminary in 1924.

Q. Will you tell us what you are doing at the present time?

A. For the past eighteen years I have been a member of the religious staff of Columbia University, the University having arranged to have a Roman Catholic priest, a Protestant minister, and a rabbi, on the staff to act as counselors to the students. I am the rabbi on the staff.

44 I have also been rabbi of a congregation in Utica, New York, for a number of years, and director of the Hillel Foundation for Jewish students at Cornell University for five years.

I might add that I have been a member of the Rabbinical Assembly of America for the past twenty-five years.

Q. Will you tell us what that Rabbinical Assembly is?

A. The Rabbinical Assembly is the organization of about 500 rabbis who have been trained to teach and preach conservative or traditional Judaism. It has its headquarters at the Jewish Theological Seminary, and is one of the two largest rabbinical organizations in the world.

46 Q. Do you hold a position in the Rabbinical Assembly?

MR. GROSSMAN: Your Honor, I don't mean to interrupt, but may I inquire at this time the purpose of this testimony; whether it is as a character witness—

THE COURT: Well, I think it is obviously more than that. But I will accept it until such point as we get into a little more detail.

Right, now the witness is merely being qualified. I assume, as an expert, in Judaism; is that, right?

MR. ADLERSTEIN: That is right.

THE COURT: Very well. And on the question that you raised on your motion?

MR. ADLERSTEIN: That is exactly right.

THE COURT: As to what you consider to be Mr. Dykman's interpretation as to how Judaism feels as to war.

I will overrule the objection at this time and let counsel go ahead.

A. (Continuing) I have been a member of the Executive Council of this Rabbinical Assembly for several years and served on a number of their other committees. Ever since its organization, eleven years ago, I have been chairman of the Standing Committee of the organization on Conscientious Objectors. I have been re-appointed each year.

I have also been the treasurer of the Joint Rabbinical Committee on Conscientious Objectors, set up by the Rabbinical
47 Assembly and the Central Conference of American Rabbis, the other large organization of rabbis in this country—Reform rabbis—and served in that capacity for six or seven years.

Q. By reason of these positions you hold in the Rabbinical Assembly; and have held, have you made it your position to study the Jewish religion regarding its standing on conscientious objection to war?

A. I have, sir.

MR. GROSSMAN: Objection, your Honor. That is immaterial, as to what the stand of any particular religion is.

THE COURT: Overruled.

Mr. GROSSMAN: May I respectfully call your Honor's attention to the Cox case.

The COURT: Yes, you may. I am familiar with it.

A. (Continuing) I have made a special study, though I would be familiar with the position of Judaism on the matter of participation in war and military training without the special study.

Q: You mean by reason of training as a rabbi?

A: Yes.

Q: Will you tell us, what is the position of the Jewish religion regarding conscientious objection to war?

Mr. GROSSMAN: Objection, your Honor.

The COURT: Sustained.

48 Q. Rabbi, is there a position in the Jewish religion regarding conscientious objection to war by adherents of the Jewish faith?

A: Yes, sir.

Mr. GROSSMAN: Objection, your Honor.

The COURT: Sustained.

Strike the answer.

Mr. ADLERSTEIN: Exception.

Is it your Honor's ruling that we are not permitting to go into that?

The COURT: My ruling, in accordance with the decisions, that it is not relevant.

Mr. ADLERSTEIN: Even where there is an error of law?

The COURT: It is not relevant.

Mr. ADLERSTEIN: Very well.

The COURT: You have your exception. That is the reason I allowed you to qualify the witness and get it in, so that you have your right on appeal, if I am wrong.

Mr. ADLERSTEIN: Thank you, your Honor.

Very well.

(Witness excused.)

49 LESTER PACKER, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. ADLERSTEIN:

Q. Referring to Exhibit 2-E, in which you wrote a letter to your draft board stating that you have come to the conclusion that you

are a conscientious objector to war, were you asked at the hearing by Mr. Dyckman, regarding why you wrote that letter?

A. Yes, I was. As a matter of fact, I was asked a number of questions by Mr. Dyckman.

Q. But you were asked that particular question; is that right?

A. Well, he didn't phrase it that way. He asked me why I had filed at a late period.

Q. And what did you say?

A. I told him that prior to that I was under the erroneous impression that you had to be a member of a religious sect in order to be an objector, and prior to that time that I objected, I felt I would have to commit a violation in order to state my position; on later evaluation I had decided that, being religious, I felt I did come within the law in spite of the fact that at the time of my objection I was not a member of any religious sect.

Q. You stated this at the hearing to Colonel Dyckman; is that correct?

A. That is correct. There was also another point I brought out.

Q. Just a moment. We are going to refer to the hearing now which you had before Col. Dyckman. Will you state what he asked you and what your answers there were?

Mr. GROSSMAN: Objection, your Honor.

The COURT: Sustained.

Q. Did Mr. Dyckman state to you that you were not a member of a religious sect or organization, at the hearing?

Mr. GROSSMAN: Objection, your Honor.

The COURT: Sustained.

Mr. ADLERSTEIN: Your Honor, my purpose in asking these questions is to show that there is no basis in fact for the classification, and the only way I can do that is to bring out what took place at the hearing.

Mr. GROSSMAN: If your Honor please—

The COURT: I don't want to hear argument on it. I have ruled.

Mr. ADLERSTEIN: I have no other proof if your Honor is not going to allow it. It has been done in other cases, and it is the only way I can prove my case, by showing what happened before the hearing officer.

Mr. GROSSMAN: That is not so, your Honor—

The COURT: Why argue about something when a ruling has been made?

The WITNESS: Your Honor, may I have a few moments to consult my attorney?

The COURT: Yes.

(The witness left the stand to consult with his attorney.)

The COURT: Do you want to take a recess, counselor?

Mr. ADLERSTEIN: No—

The COURT: If you want to go inside, you may go in here.

The WITNESS: Yes, I would like to.

Mr. ADLERSTEIN: Yes.

The COURT: All right.

(Short recess.)

By Mr. ADLERSTEIN:

Q. Did Mr. Dyckman, in his report of the hearing, referring to Government's Exhibit 2-P, state everything that took place at the hearing?

A. No, he did not.

Mr. GROSSMAN: Objection.

The COURT: I will allow that.

The WITNESS: He did not.

Q. Will you state what was omitted from the report that took place at the hearing.

A. Well, at one point I had asked him if there was anything detrimental to my position, which was on the F B I report. He said there was nothing which might prove unfavorable except the fact that I was not a member of any religious sect at this particular time.

Now, during the course of the hearing we had gone through a lengthy discussion as to my particular religious beliefs, and when he made the statement that the only unfavorable information they had was that I was not a member of any sect, I stated that I considered myself to be religious and he affirmed that statement.

Q. Is there anything else omitted?

A. Yes. There was another point omitted. I had mentioned some of my views—

The COURT: Views about what?

The WITNESS: I will explain that, your Honor.

A. (Continuing) Which had also been omitted, about my present philosophy in meeting any opposition.

What I mean by "opposition"—I mean evil. I told him that I could not at any time support war violently. I believed in using Gandhian methods in resisting an opponent. By "Gandhian methods," I meant this—

The COURT: Did you tell Mr. Dyckman what you meant? Are you telling us now what you told Mr. Dyckman or are you telling us something now that you did not tell Mr. Dyckman?

The WITNESS: I told Mr. Dyckman—

The COURT: Just a minute. You may tell us now anything that you said to Mr. Dyckman, but you may not tell us anything
53 which you are now stating for the first time.

The WITNESS: I see.

The COURT: Did you say something to Mr. Dyckman about Gandhiism?

The WITNESS: I did not alleviate on it. I did mention that I did believe in Gandhian methods.

The COURT: All right.

A. (Continuing) He asked me if I had read any books which might have influenced me. I told him I had not read any books which might influence me, except books in my religious training, but I had read books on the subject of this war, both pro and con.

Another statement which I had made to Mr. Dyckman, which did not appear on the report, was that at that time I was willing to participate in welfare or humanitarian projects which would benefit perhaps the world and the people of this country, but I could not in any way support war directly or indirectly.

Q. Was there anything else that was not in that report?

A. I cannot recall at this time.

Mr. ADLERSTEIN: That is all, excepting for the exception I have taken to your Honor's ruling regarding the exclusion of the hearing.

CROSS EXAMINATION.

By Mr. GROSSMAN:

Q. Did Mr. Dyckman give you an opportunity to state
54 whatever you wanted to tell him?

A. Well, I wouldn't say he was too inquisitive.

The COURT: That is not what you are asked.

The WITNESS: The point is—

The COURT: Just a minute, please, young man. You were asked this question: Did Mr. Dyckman give you the opportunity to state anything that you wanted to state?

Now, the answer to that question is either yes or no.

The WITNESS: Your Honor, there was a general attitude at the hearing—

The COURT: I am not asking about a general attitude; I am asking about a fact, and I would like responsive answers.

The WITNESS: He allowed me to present whatever I wanted to.

Q. In fact, at the end of the hearing he asked you this question: "Is there anything more you would like to say?"

Is that a fact, Mr. Packer?

A. I think he did, yes.

Mr. GROSSMAN: No further questions.

The COURT: Very well.

Do you have some further questions?

55 Mr. ADLERSTEIN: I would like to know whether the Government was quoting from the minutes of the hearing before Mr. Dyckman.

The COURT: What difference does it make?

Mr. ADLERSTEIN: I would like to offer the minutes in evidence, if he was.

Mr. GREENBERG: We would be very glad to do it, your Honor.

Mr. GROSSMAN: We have no objection.

The COURT: Very well. Offer them.

Mr. ADLERSTEIN: May I look at it?

The COURT: Do you mean you want to withdraw your offer?

Mr. ADLERSTEIN: I may have spoken too hastily.

The COURT: I am just trying to find out your position. You offered a document; it was not objected to, in fact it was consented to. If you want to withdraw your offer, you may withdraw it and it will have no effect on the trial.

I will deem it that you have not yet made the offer. You may look at it and if you wish to offer it, you may, and if you do not, you do not have to offer it.

Do you now offer them?

Mr. ADLERSTEIN: I offer the minutes in evidence.

The COURT: And there is no objection?

Mr. GROSSMAN: No objection.

56 The COURT: Very well.

(Marked Defendant's Exhibit B.)

Mr. ADLERSTEIN: Defendant rests.

Mr. GROSSMAN: Government rests.

MOTION FOR ACQUITTAL AND DENIAL THEREOF

Mr. ADLERSTEIN: I would like to move at this time to acquit the defendant on the following grounds:

First, that there was no basis in fact for the classification made; that the defendant should have been classified in 4E.

Second, the conclusion of Jackson Dykman regarding the religious training in a faith which is not opposed to military service is an error of law contrary to the provisions of Section 6(j) of the Selective Training and Service Act of 1948.

Third, the conclusion of Jackson Dykman that it was speculative to assume that the training in Hebrew faith formed the basis of opposition to participate in war was not a correct statement of the religious faith and gave erroneous advice to the appeal board.

Fourth, the conclusion of Jackson Dykman was without basis in fact and capricious and arbitrary.

Fifth, the conclusion of Deputy Attorney General Peyton Ford was without basis in fact, capricious and arbitrary, and contrary to the provisions of 6(j) of the Military Training and Selective Service Act of 1948.

57 Further, that said report of Peyton Ford misinterpreted Section 6(j) of the said Military Training and Selective Service Act of 1948.

The COURT: In what respect?

Mr. ADLERSTEIN: With respect to the fact that defendant, or registrant, had opposition to war, but it was philosophic or a moral code, whereas the evidence introduced showed that he believed in a Supreme Being and was opposed to war and therefore it was in error to come to the conclusion that he did come to. There was nothing in the record to justify the statement that the defendant's belief was philosophic or based on a moral code.

The COURT: Motion denied.

Mr. ADLERSTEIN: Exception.

The COURT: I find the defendant guilty.

Are you ready for sentence?

COLLOQUY RE PROBATION REPORT AND BAIL

Mr. ADLERSTEIN: I would like to have a probation report, if your Honor please.

The COURT: Very well.

Mr. ADLERSTEIN: And I also request that bail be continued until the probation report comes in.

Mr. GROSSMAN: If your Honor pleases, it has been the custom in all these cases, when the Court has found the defendant guilty, to have him remanded at once, and I make a similar request in
58 this case. No purpose would be served because this defendant should be sentenced. This is the first time they have asked for a probation report in this case.

Among the exhibits, your Honor has read as to his character. We are not impugning that. We do not consider this a venal offense, but we do consider it a deliberate offense against the laws of the Government.

However, if the defendant wants a probation, I feel he should be entitled to it.

Nevertheless, we do ask that he be remanded at this time.

The COURT: What do you expect a probation report will develop?

Mr. ADLERSTEIN: The reason I am asking for a probation report, I want to make a request similar to what is being done in California in these cases; Where it can be shown that a defendant is acceptable

for service by the Friends' Service Committee, the courts out there have, on occasion, where the facts warranted it, permitted a probation during a sentence, and also have allowed him to serve in some capacity which would be useful or beneficial to the national interests, and I would like to make this request, and I would like to get a little time to submit something on it and also to give some information to the probation officer so that he can consider it.

59 I know it has not been done here, but I think it is done in California. There is no reason why it cannot be extended to New York.

Mr. GROSSMAN: We have no such procedure available, if your Honor please.

Mr. ADLERSTEIN: I don't see why it cannot be available.

The COURT: What you mean is that it has not been done before.

Mr. GROSSMAN: Well, it hasn't been done in this district. During the war, I believe there was provision for camps and other things. But at this time there is no procedure available in New York City.

Mr. ADLERSTEIN: I would like to call your Honor's attention to the fact that new regulations have been adopted. These are work regulations, where people are assigned to work of national importance, under the new regulations, and I think the Court can consider those regulations, even though the defendant has been convicted.

The COURT: Isn't that, though, with respect to those who have been found to be conscientious objectors?

Mr. ADLERSTEIN: Yes. I simply said the Court could consider those regulations.

The COURT: Is it your contention that what is being done in California that upon conviction, the Court is nevertheless permitting people convicted to be then put in the class of those who have been found to be in fact conscientious objectors?

60 Mr. ADLERSTEIN: That is correct, your Honor.

The COURT: That is a most amazing situation to me.

Mr. ADLERSTEIN: I think I could show your Honor a copy of the judgment. I have it.

The COURT: I would be very interested in seeing it.

Mr. ADLERSTEIN: Would your Honor give me a minute to see if I can find it in my papers?

The COURT: Yes.

Mr. GROSSMAN: Your Honor, I am advised that on conviction every registrant is automatically put in 4F as a felon—

Mr. ADLERSTEIN: We are not asking for reclassification.

The COURT: It seems to me an extraordinary thing that a man convicted of violating the law then gets the classification in fact, if not in form, of a person who has been found to be a conscientious objector. It seems to me that that would make a mockery of the whole proceeding.

Mr. ADLERSTEIN: I would like to show your Honor a copy of the judgment. U.S.A. v. Donald Louis Wright.

61 The COURT: Yes, I have seen it, and it doesn't impress me.

Mr. GROSSMAN: Your Honor, may I point out that this man failed to report; he may have been classified as a conscientious objector—

The COURT: You need not argue about it. It doesn't impress me.

Mr. ADLERSTEIN: I cited this because it is something that has been done by a United States District Court.

The COURT: Yes, it has.

Mr. ADLERSTEIN: And I thought this Court might follow—

The COURT: I don't know what all the facts are there, but on the facts before me, I could certainly not make that disposition.

Mr. ADLERSTEIN: Will your Honor give me a chance, then, to inquire what the facts were, so that I can present them?

The COURT: No. Assuming that they were in all respects like this one, I wouldn't do it, and if the facts are different than this, then obviously it isn't applicable here.

Mr. ADLERSTEIN: Is it your Honor's ruling that you would allow no probation or no assignment to work of national importance under any circumstances?

62 The COURT: Once a man has been convicted and sentenced, he is out of the hands of the Court altogether. He is committed to the Attorney General for such disposition and punishment; according to law—

Mr. ADLERSTEIN: Yes, but according to the California Case—

The COURT: Yes, but in so far as that case may have been on all fours with this, it doesn't impress me as a case which I ought to follow, and I decline to follow, and in so far as the facts might be different, obviously it would not be relevant here.

Mr. ADLERSTEIN: Could I speak to the defendant, to find out about his sentencing, your Honor? It will just take a minute.

The COURT: Yes, you may.

Mr. ADLERSTEIN: If your Honor is not going to grant us anything regarding this request for assignment to work, I would like to ask for a postponement of sentence for one week, without the probation report, and also to continue the bail as previously requested, because there has been a case by Judge Irving Kaufman in which the bail was continued. It was tried a short time ago. I think it was the case of U. S. v. Romano.

The COURT: What is the objection to continuing him on bail for one week?

63 Mr. GROSSMAN: The man has been convicted of a crime, your Honor—

The COURT: I am really unfair in asking you that, because when I was down there where you are and was asked the question, I used

to make the argument which I think you are going to make word for word.

I am going to continue him on bail for one week from today, for sentence.

Mr. GROSSMAN: Your Honor, you don't want any probation report?

The COURT: No, no.

April 2nd, in this courtroom, at 10:30.

(Adjourned to April 2, 1952, at 10:30 o'clock a.m.)

64 UNITED STATES OF AMERICA

vs.

LESTER PACKER

New York, April 2, 1952,
10:30 o'clock a.m.

Present: Mr. Grossman, Mr. Adlerstein.

COLLOQUY RE SENTENCE

The CLERK: United States v. Lester Packer. Both sides ready?

Mr. GROSSMAN: The Government is ready.

The COURT: Is the defendant ready?

Mr. ADLERSTEIN: Yes, sir.

The COURT: Very well. Do you desire to make a statement?

Mr. GROSSMAN: Yes, your Honor, I desire to make a brief statement.

The COURT: All right.

Mr. GROSSMAN: I won't review the facts because I feel your Honor recalls full well all the evidence that went in last week, but I would just like to mention one or two highlights to your Honor. One of them is the fact that this defendant never made any claim as a conscientious objector in his original questionnaire, and it appears that it was a mere afterthought on his part; also the other important factor that he has no basis for religious belief at the present
65 time, judging by the evidence that came out at the trial, inasmuch as he is not attending church or temple at this time, and in fact, in Exhibit B he made the statement to Mr. Dykman that he had really not gone with the ritual of his religion. I think that is a very important factor in considering whether there was anything to his claim at all.

The COURT: Well, that question is not open here, as I understand it in any event.

Mr. GROSSMAN: Yes. I merely call it to your Honor's attention.

The COURT: Yes. Well, those are matters which Mr. Dykman

may have taken into consideration. I do not know that it is necessary to comment on the presence or absence of the defendant's adherence to some formal faith, or to a formal adherence to a particular faith, but those questions were all passed on at the hearing provided by law and, as I understand it, that question is not open to the defendant here.

Mr. GROSSMAN: I would also want, or would like to call your Honor's attention to the fact that this defendant was given every opportunity in the administrative hearings to be heard and to present every feature or form of his case that he had, and he was given every opportunity and every means was made available to him.

I can only state to your Honor that there has been a recent policy which has been established in the office with regard to recommendations, if your Honor desires to hear about it.

I can also state that we have had the cooperation of his attorney; that is, the cooperation of the defendant and his attorney with regard to waiving various technicalities.

The COURT: I will hear what recommendation you have to make.

Mr. GROSSMAN: The Government's recommendation in all these cases is five years, your Honor.

The COURT: And is that the recommendation you are making in this case?

The COURT: Very well. Counsel, do you desire to be heard?

Mr. ADLERSTEIN: Yes, sir.

The COURT: All right.

Mr. ADLERSTEIN: May it please the Court, I want to state first that this man's claim was no afterthought whatever. The actual fact of this case is that he made no claim originally because he did not know the law; that is to say, he did not know the law regarding filing when you claim to be a conscientious objector. He thought that you had to belong to a religious sect or organization to be heard. At one time, in fact, Mr. Dykman fell into the same error, thinking you had to belong to a religious sect or organization, because he wrote him to that effect, inasmuch as he said that they were objecting on that ground, or that that was one of the grounds of their objection to his claim, and I think that is definitely against the law or the particular statute involved here.

The COURT: I did not so read Mr. Dykman's opinion.

Mr. ADLERSTEIN: I may also refer to a letter which he wrote to this defendant in which he said that there was an objection to his claim, and if your Honor recalls, that was Defendant's Exhibit A.

Now, when he said, "I never went along with the ritual," I think the Court should see the distinction between the ritual and religion, or the basis or substance of religion because

UNITED STATES OF AMERICA VS. LESLIE BACALAN 31

The COURT: Yes, you are right on that but, as I indicated before, counselor, those are matters which I think are not open here. I think those are matters which were properly presented to and passed on by Mr. Dykman.

Mr. ADLERSTEIN: Mr. Dykman also——

68 The COURT: I understand your point to be that Mr. Dykman used improper standards in arriving at his decision, is that it?

Mr. ADLERSTEIN: That is one of my contentions or points.

The COURT: Yes. I disagree with that, and I think that Mr. Dykman's opinion is not fairly susceptible of that interpretation.

Mr. ADLERSTEIN: Yes. Now, on the other hand, the statement was made here that we were given every opportunity to be heard. Well, I do say that we were given a pretty fair chance to be heard, but I do say nevertheless that the local board wrote him a letter and stated that they would not give him a hearing, and then it went to Col. Cobb, who suggested an appeal, but he did not have a hearing before the local board, even though he asked for an appeal, but he did not raise it as a technicality, and he did not have every opportunity as the U. S. Attorney stated.

Now, I have these notes here but I will skip what we have already covered. Even Peyton Ford said that this man was a conscientious objector, and it does show that the man was acting in good faith. The FBI report says the same thing, and in addition——

The COURT: Where is this letter from Peyton Ford that says that? I don't recall any such statement.

69 Mr. ADLERSTEIN: The letter is in the Government file which says that this man——

The COURT: Oh, I recall the letter from Peyton Ford, but I am just asking you to refresh me on that statement that you say is contained there. I don't recall that.

Mr. ADLERSTEIN: Oh, yes, it does make the statement.

The COURT: You may be right, and maybe Government counsel has it here and he can show it to me.

Mr. GROSSMAN: Government's Exhibit 2-Q, your Honor.

The COURT: All right.

Mr. ADLERSTEIN: I would like to say that these papers are very difficult to interpret in some cases, and it is very difficult for a draft board to judge the man's innocence or lack of good faith. This was pointed out by General Hershey in the letter which he wrote last Christmas in the Christmas message to the various local boards throughout the country, and this is what General Hershey says with regard to it:

• "The basic difficulty lies in the absence of any accepted methods by which the beliefs and the sincerity of registrants may be tested.

70. The attempt to judge these attributes by what the registrants have done or have said permits a large area of error. Observation of a registrant is far from constant and witnesses are other human beings. These witnesses, moreover, are often prejudiced in favor if friendly, and contrariwise, if unfriendly. Their membership in a more standardized religious organization often adds rather than detracts from the exercise of tolerance to bring unusual methods in the exercise of the right to worship."

Now, this man did not belong to a religious sect or organization and, therefore, I say that in accordance with that letter, he did not get the standards that somebody who did belong would get, and nevertheless I say, in accordance with the Regulations and the law as I pointed out at the trial, that this man did comply and come within the law to be classified as a conscientious objector.

And the final thing I want to point out, your Honor, is that Mr. William Blackstone in his commentaries on the common law has said that conscience is superior to law, and that he thought a man had a right to follow his conscience when it does come into conflict with the law, and I think that is what this man has done, and the Court should consider that he is acting in good faith, and according to his own conscience when he has taken the stand that he has taken.

71. Then as Mr. Grossman has pointed out, I have cooperated as fully as possible with the Government to try to save expense and time in this case, and I did not raise any technicalities at all which I could have raised, and I think that the Court should consider that also.

That is all I have to say, your Honor, and I would like you to listen to the defendant, who has a few words to say.

The COURT: I will hear him.

The DEFENDANT: Well, as to the fact that I filed late, that was not of any relevant importance to Mr. Dykman, as he stated in his final report, and it is of absolutely no significance to the fact that I filed late as a conscientious objector.

I only wish to state my present views right now. I am convinced of the fact that however others might feel as to war, my study teaches me that its motives are contrary to the teachings of God, and, as I see it, the fundamental basis of religion is incompatible to the support of war, and if I am called upon to commit acts which violate my conscience, I must refuse to comply. This was upheld or affirmed before by the Allied courts at Nuremburg when it was declared that all men are normally responsible individuals and that there are certain decisions which men must make for themselves, and those decisions are decisions which cannot be made

72 for them by any supreme power or state; that among the decisions which all men must be personally responsible for is when they are called upon to commit crimes against human beings.

I consider war to be a crime against humanity, killing innocent men, women, and children. I do not believe that evil acts, no matter how well intended, can bring about good ends. I cannot see how the bayoneting, bombing, blasting, blockading and massacring innocent and guilty alike can come within the sanctions of God. I must have respect for the lives of all mankind and I must have respect for the life of an opponent. I feel that certain duties have been inculcated in me and I have had reasonable, adequate training so that I am opposed to war and I have been motivated in my religious belief in God and the divinity of man.

Now, the United States has contended—

The COURT: What was that last about the divinity of man?

The DEFENDANT: That is right.

Now, the United States Government has contended that I am insincere. I cannot acquiesce in that. My presence before this Court is the most valid witness I have to the sincerity of my belief, and I consider myself a conscientious objector, morally and religiously opposed to war.

The COURT: Have you completed your statement?

73 The DEFENDANT: Yes, sir.

The COURT: Do you desire to add anything to that?

Mr. ADLERSTEIN: I would just like to say that I do not think that he means that man is divine. I think he means that man has been given some qualities which are similar to His Nature. I think that is what he is referring to. I don't think man could actually be divine.

The COURT: Well, we need not get into a debate on that. The defendant apparently has prepared this statement with some care because he read it, of course, and whatever his meaning is, the use of those words I do not think is of importance here.

Stand up, please.

(The defendant arises in the courtroom.)

SENTENCE

The COURT: I now sentence you to the custody of the Attorney General for a term in such institution as he shall select, for a period of four years.

Mr. ADLERSTEIN: Thank you, your Honor.

Mr. GROSSMAN: Thank you, your Honor.

73a

GOVERNMENT EXHIBIT "2-P"

Report of Hearing Conducted by the Department of Justice

Preliminary Statement

Registrant resides at 1478 Walton Avenue, The Bronx, N. Y.

Form 100 was filed August 29, 1949.

Form 150 was filed October 31, 1950.

Registrant made no claim of conscientious objection in form 100, and was classified in Class 1-A on Sept. 28, 1949.

Thereafter his induction was cancelled and he was allowed to file form 150.

The Appeal Board reviewed the file on January 12, 1951 and transmitted it to the Department for an advisory opinion.

The file was transmitted to the hearing officer on April 5, 1951 and a hearing accorded registrant on May 7, 1951, the stenographic minutes of which were received by the hearing officer on July 9, 1951.

Statement of Facts

1. Registrant was born in New York City on April 4, 1929. After completing elementary and high school he took a course at Dale Carnegie Institute of Human Relations and while at public school also attended Zion Hebrew School. He has been employed since leaving high school by Gladys & Belle Inc., milliners, for which he is a merchandise buyer.

2. Registrant was born of Jewish parents but states in form 150 that he is a member of no religious sect or organization. He states in this form that his religious guidance comes from the dictates of his conscience and that, although he believes in a Supreme Being, he doesn't know whether his code of morals will be considered of a religious nature. He states that he received a brief religious training in his early years such as study of the Decalogue and religious prayer as well as moral training from his parents. He quotes a Chinese philosopher to the effect that human nature is good and arrives at the conclusion that 'minor good ends do not justify wholesale and indiscriminate slaughter of human life and destruction of war'.

3. The report of the Federal Bureau of Investigation indicates registrant in his early school days was not a robust child, his school record however shows nothing unfavorable. He has been employed by a millinery shop for the past seven years and is described as a hardworking and sincere employee. One of his references vouches for his character but considers his judgment concerning war immature. The other that his stand is not a matter of temporary politics or belief. Neighborhood report is favorable, one neighbor has

heard registrant express a personal aversion to war and its resultant source.

No credit or criminal record.

4. At the hearing registrant produced a statement, marked exhibit A, the signers of which he described as personal friends one of whom participated in the second German war and the other of whom he believes is not a conscientious objector. This statement certifies to the fact that registrant was a conscientious objector before registration and that his convictions are of a sincere nature. Neither 73c of the signers appeared at the hearing.

5. At the hearing registrant stated that his parents are very devout orthodox Jews; that he attended religious school from the age of 8 or 9 to that of 13 when he was confirmed. After that he attended the temple for a while and then began to discontinue attendance saying, "I had never really gone along with the ritual of my religion". Asked to state his present attitude, registrant said:

"Q. Tell me this; when you speak of the school, from 1940 to 1943, you went to Zion Hebrew School, 172d Street and Walton Avenue? A. That's right. I went to another school prior to that; it is no longer in existence and I cannot remember the name.

Q. But there you received instruction in the beliefs and Hebrew? A. That's right.

Q. Tell me what your present attitude is? A. I consider my religion to be a re-union of the essence of the human being; by that I mean. I feel that all human beings are naturally good; they have a certain divinity within themselves; to me God is not only external, he is internal; it is within all of us; as I mentioned in my statement, I felt that all people have a certain basic nature. I am sure that it is within the, the nature is the same with all beliefs of the world.

Q. Is this answer that you made here in your conscientious objector form, the answers to questions 2nd and third, do they pretty well express, that I hand you, your feelings? A. Yes, they do.

Q. Did you write that yourself without any help? A. Yes. I certainly did.

Q. So that it is not reproduction? A. Definitely."

The statement in answer to Questions 2 and 3 in form 150 begins: "I do not know whether my code of morals will be considered of a religious nature although I believe in a Supreme Being. This code may very well stem from this Supreme Being."

The registrant then states his early training "has probably had a definite bearing on his subconscious". He then writes, "Perhaps my belief can best be stated in the words of Mencius the immortal Chinese Philosopher when he said Human nature is good". The registrant then states that if men become evil it is not the fault of their original endowment since mercy, shame, a

sense of right and wrong, righteousness and propriety or moral consciousness is found in all men. From this he finds that international morality has never sunk so long as now. He closes as follows:

"I believe that no man has the right to take the life of another human being regardless of circumstances. We are put on earth by the will of God and by the will of God we shall depart".

Asked where he acquired this belief he stated they had been slowly developed within himself, "perhaps my religious training, that I had always been taught to love my neighbor, ten commandments 'Thou shalt not kill'; I have always accepted these laws in practical loving; I have used this attitude towards my friends.

Asked to explain why no claim of conscientious objection had been made until after he was classified in Class 1-A, registrant stated he had acted on the advice of friends to wait until he found whether he was physically fit for service before making such a claim.

Conclusion

Registrant received religious training in a faith which is not opposed to military service and it is quite speculative to assume that such training forms the basis of unwillingness to participate in war in any form.

Registrant has been allowed to make a claim for exemption 73e and in reaching his conclusion the hearing officer has given no significance or weight to the fact that no statement of conscientious objection was made in form 100. It has been stated in this report that such was the fact because it is believed to be part of a complete statement.

The present case in the opinion of the hearing officer is one in which the registrant has failed to establish by sufficient evidence that his opposition to war arises from religious training and belief.

Recommendation

That registrant's claim for exemption from combatant and non-combatant training or service in the armed forces be denied and he be classified in Class 1-A.

(Signed) JACKSON A. DYKMAN,
Hearing Officer.

73f

DEFENDANT'S EXHIBIT "A"

Department of Justice

Washington, D. C.

Jackson A. Dykman,
Special Assistant,
177 Montague Street,
Brooklyn 2, N. Y.

May 2, 1951.

Mr. LESTER PACKER,
1478 Walton Avenue,
The Bronx,
New York, N. Y.

Dear Sir:

In reply to your letter of April 29 you are advised that there is no evidence before me unfavorable to your claim as a conscientious objector except the fact that in your classification questionnaire form 100 you made no claim of conscientious objection and in your special form for conscientious objector you stated that you are not a member of a religious sect or organization.

Very truly yours,

(Signed) Jackson A. Dykman,
Hearing Officer.

73g

DEFENDANT'S EXHIBIT "B"

Minutes of hearing conducted by the Department of Justice pursuant to the Selective Service and Training Act of 1948.

In re LESTER PACKER

Appeal from Local Board No. 22, 1910 Arthur Avenue, Bronx 57

Appeal Board Panel 4, 350 Fifth Avenue, New York 1, New York

United States Attorney, Frank J. Parker, Eastern District of
New York

Hearing Officer, Col. Jackson A. Dykman

Shorthand Reporter, Elvira C. Rust

May 7, 1951

Q. Mr. Packer, you are claiming exemption from both combatant and non-combatant military service?

A. That's right.

Q. In your special form for conscientious objector you say that you are not a member of any religious sect or organization, do you mean that?

A. Yes, well, I don't belong to any particular organization, but I do consider myself religious.

Q. I have no doubt of that but I just want to straighten this out?

A. Yes, sir.

73h Q. You are born of Jewish parents?

A. That's correct.

Q. Tell me, as a small boy; what if any religious training you have had?

A. I went to religious school, I believe from the age of about 8 or 9 until I was 13 and then I received my confirmation at that age.

Q. Your Bar Mitzvah?

A. That's right.

Q. After that did you go to the Temple regularly? Did your parents go?

A. My parents are very devout people; I went for a short while and then I more or less began to discontinue it; I had never really gone along with the ritual of my religion.

Q. Your parents are orthodox?

A. Sure.

Q. Tell me this, when you speak of the school, from 1940 to 1943, you went to Zion Hebrew School, 172nd Street and Walton Avenue?

A. That's right. I went to another school prior to that; it is no longer in existence and I cannot remember the name.

Q. But there you received instruction in the beliefs and Hebrew?

A. That's right.

Q. Tell me what your present attitude is?

A. I consider my religion to be a re-union of the essence of the human being; by that I mean; I feel that all human beings are naturally good; they have a certain divinity within themselves; to me God is not only external, he is internal; it is within all of us; as I mentioned in my statement, I felt that all people have a certain basic nature, I am sure that it is within the, the nature is the same with all beliefs, of the world.

73i Q. Is this answer that you made here in your conscientious objector form, the answers to questions 2nd and third, do they pretty well express, that I hand you, your feelings?

A. Yes, they do.

Q. Did you write that yourself without any help?

A. Yes, I certainly did.

Q. So that it is not production?

A. Definitely.

Q. Are there any circumstances, Mr. Packer, under which you would be willing to fight for some cause or use force to resist anything at all?

A. Well, let me say I believe in spiritual force and not in violence; I have always followed the philosophy of not hating an enemy, by hating him, is seen as something that I might try to enforce upon him; as far as resistance goes, I feel that one can accomplish more by trying to influence your opposition and showing a little love rather than using hatred and by emotions in trying to force a certain issue; to my belief, violence has never accomplished anything.

Q. Where do you think you acquired that belief and those feelings?

A. It is something that I have slowly developed within myself; of course, certain things are basic in me; as I mentioned in my statements, certain basic natures which we all have; perhaps, I am more aware of those natures than other people are.

Q. What I want to know is, was there any particular person who taught you this, or any particular book that you got it out of; what is the source of it? What do you think made you feel this way?

A. Perhaps the destruction in the last war; perhaps my religious training, that I had always been taught to love my neighbor, ten commandments, "Thou shalt not kill"; I have always accepted those laws in practical living; I have used this attitude towards my friends and acquaintances.

Q. What is the explanation of the fact that when you made out your registration or classification questionnaire, you did not make any claim of conscientious objector?

A. I had intended to be a conscientious objector if I were called to participate in military service; my friends, rather my close friends were aware of this; and at the time of my registration when I had made my intentions more explicit to them, they sort of advised me that, you don't know if you could even possibly pass your physical, why go looking for trouble now; why not wait and see; not knowing the procedure of a conscientious objector and not realizing that my rights would expire after a certain time, I took this advice.

Q. Well, you have been allowed to make your claim, so that part of it is all right, but you were waiting to see, before making your declaration of your attitude, you were waiting to see what would happen to you, on the basis of what would happen to you for physical reasons?

A. That's right.

Q. Anything that you would like to add to what you have said?

A. Yes, what my friends have said; and I have a statement here; my friends signed that statement themselves.

Q. Who is Arthur Miller?

A. He is my personal friend; I have known him for a number of years.

73k Q. How old is Mr. Miller?

A. About 23.

Q. Mr. Liebman?

A. He is about 22. Mr. Miller does not hold the same opinion that I do but believes it to be sincere; I did participate in military service in the last war.

Q. Mr. Liebman did not? Is he also an objector?

A. I don't believe so.

Col. Dykman: I will mark this paper, To whom it may concern, signed Arthur Miller, Mr. Liebman, Exhibit A. There is nothing derogatory to you, Mr. Packer, in the FBI report; there is nothing you have to meet, employment record is favorable and your friends and neighbors seem to confirm your attitude?

A. All right.

Q. If you have anything more you would like to say?

A. I might add that I will always be willing to participate in any sort of—I would be willing to assist in any welfare organization that the Government might establish, any humanitarian organization, rehabilitation work; I would be in favor of that; I would be willing to give my service in anything that will be creative but not destructive.

Q. But you would not be willing to serve in the non-combatant branch of the Army?

A. It is an integrated branch of military service and by supporting that branch, I will be supporting the war.

(Witness excused.)

JUDGMENT AND COMMITMENT—April 2, 1952

On this 2nd day of April 1952 came the Attorney for the government and the defendant appeared in person and by counsel

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by the Court (Jury Waived) of the offense of fail and neglect to take one step forward after it had been determined that the defendant was fully qualified for induction into the Armed forces of the United States Title 50 Sec. 462 U. S. C. as charged and the court having asked the defendant whether he has anything to say why judgment should not be

pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four Years.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN F. X. MCGOHEY, JR.,
United States District Judge.

United States District Court. Filed April 2, 1952. Southern District of New York.

75 In United States District Court

NOTICE OF APPEAL—April 4, 1952

Lester Packer, the above named defendant, hereby appeals to the Court of Appeals for the Second Circuit from a Judgment by this Court on the 2nd day of April 1952, committing the defendant to the custody of the Attorney General for a period of four years, as a result of his conviction for the offense of refusing to take one step forward for induction into the armed forces of the United States in violation of 50 U. S. C. 462; and defendant further appeals from the Order made February 29, 1952 and entered March 3, 1952 in the Office of the Clerk of this Court; wherein the Court quashed a subpoena duces tecum and denied a motion to inspect the report of the Federal Bureau of Investigation herein.

Dated April 4, 1952.

HERMAN ADLERSTEIN,
Attorney for Defendant,
79 Wall Street,
New York 5, N. Y.

76 In the United States Court of Appeals for the Second Circuit

STIPULATION EXTENDING TIME TO DOCKET RECORD ON APPEAL

It is hereby stipulated and agreed by and between the United States Attorney for the Southern District of New York on behalf of appellee and the attorney for the appellant, that the time of the appellant to file and docket the record on appeal herein be and the

same is hereby extended to and including the 14th day of October, 1952.

Dated: New York, N. Y., September 30, 1952.

MYLES J. LANE, by D.J.G.
United States Attorney.
 HERMAN ADLERSTEIN,
Attorney for Appellant.

So Ordered.

ALEXANDER M. BELL,
Clerk, Court of Appeals

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In United States District Court

STIPULATION AS TO RECORD AND EXHIBITS—October 8, 1952

The appellant herein and his counsel have represented and hereby represent to the appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and such points as are relevant in reply.

(2) That in so far as the transcripts of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately and omissions, if any, are clearly marked. Such omissions are only of matter wholly immaterial to any question raised on this appeal.

(3) That the only Exhibits reprinted herein are Government Exhibit "2-P" and Defendant Exhibits "A" and "B", but any other exhibits deemed material will be handed up to the Court upon the argument by either side.

(4) That the transcript of the record contains all matters required to be set forth by applicable rules.

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the Court upon the argument of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to the appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the appellee may, at its option, reprint such matter as an appendix to its brief or may require the appellant to reprint

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such matter, and use such matter with the same force and effect as if reproduced herein.

Dated October 8, 1952.

MYLES J. LANE,

Attorney for Plaintiff-Appellee.

HERMAN ADLERSTEIN,

Attorney for Defendant-Appellant.

Clerk's Certificate to foregoing paper omitted in printing.

79 United States Court of Appeals for the Second Circuit, October Term, 1952

No. 116

Argued December 11, 1952

Docket No. 22514

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

against

LESTER PACKER, DEFENDANT-APPELLANT

OPINION—December 31, 1952

Before: AUGUSTUS N. HAND, CLARK and FRANK, *Circuit Judges*

Appeal from the United States District Court for the Southern District of New York. John F. X. McGohey, Judge

The defendant appeals from a judgment of conviction and sentence for violation of 50 U. S. C., Appendix §462 because of his failure to take the symbolic "one step forward" which would have constituted his induction into the armed forces of the United States, after it had been determined that he was fully qualified for induction. *Reversed.*

80 Herman Adlerstein, Attorney and counsel for defendant-appellant.

Myles J. Lane, United States Attorney; Daniel H. Greenberg, Thomas F. Burchall, Jr., and Silvio J. Mollo, Assistant United States Attorneys, for United States of America, plaintiff-appellee.

PER CURIAM:

The defendant was convicted for violation of 50 U. S. C., Appendix §462 in failing to take the symbolic "one step forward" required

for his induction into the armed forces. The government argues that he waived the claim to be classified as a conscientious objector, which he is now asserting, because he did not set it forth in his answer to the selective service questionnaire. He was, however, later given by his Draft Board a form to fill out for the statement of his claim. When the Board declined to reopen his classification, the Director of Selective Service of New York City wrote the Local Board, saying that since the defendant had been furnished with the form on which to make his contention, "[t]his may be considered indicative on the part of the Local Board to reopen and reconsider the registrant's claim anew. If this could be considered a reopening, then, pursuant to the regulations, the registrant should have been mailed a new notice of classification, SS Form 110, and thereafter his rights to appeal could have been extended an additional ten days. Rather than sending out a new SS Form No. 116 [sic] at this time, it is suggested that his notice of induction be cancelled and that his case be sent to the Appeal Board, on the questions of objection to combatant and non-combatant 81 duty as a conscientious objector." Government's Exhibit 2K. Transcript of Record, p. 30.

Since the Local Board cancelled the defendant's order of induction and he was allowed to take an appeal to the Appeal Board, which classified him in 1A, it is our opinion that the Local Board permitted the reopening of his case and that any previous waiver may not now be claimed by the government. See 32 C. F. R. 1625.2.¹

Moreover, the letter from the Director of Selective Service for the City of New York, considered under 32 C. F. R. §1604.13 as a

¹ §1625.2 When registrant's classification may be reopened and considered anew. The local board may reopen and consider anew the classification of a registrant upon the written request of the registrant, * * * if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction. * * * unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

State Director, may be regarded as a request that the Local Board reopen the defendant's case. 32 C. F. R. § 1625.3.²

At the hearing before the Hearing Office of the Department of Justice the defendant was denied the right to see the F. B. I. report on which the eventual recommendation of the Department of Justice to the Appeal Board that the defendant's claim as a conscientious objector be denied was in part based. In *United States v.*

82 *Nugent* (November 10, 1952), (2d Cir.), — F. 2d —, we held such a denial to be reversible error. It is true that in the case at bar the defendant was told that the F. B. I. report was altogether favorable to him. But the correctness of such a representation was in our opinion a matter which the defendant was entitled to judge for himself by seeing the original F. B. I. record. On the authority of our decision in *United States v. Nugent, supra*, the judgment is

Reversed.

83-84 United States Court of Appeals for the Second Circuit

UNITED STATES, PLAINTIFF-APPELLEE

v.

LESTER PACKER, DEFENDANT-APPELLANT

JUDGMENT—December 31, 1952

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL,

Clerk.

85 Clerk's Certificate to foregoing paper omitted in printing.

² §1625.3 When registrant's classification shall be reopened and considered anew. The local board shall reopen and consider anew the classification of a registrant upon the written request of the State Director of Selective Service * * * and upon receipt of such request shall immediately cancel any Order to Report for Induction * * * which may have been issued to the registrant.

Form approved
Budget Bureau No. 33-R102

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

Selective Service No. 50 22 22 188

Date of mailing 7-19-49

Date of birth:

Name:

4-4-29

(Month)

(Day)

(Year)

Packer Lester

(Last)

(First)

(Middle)

Address: 1478 Walton Av.

(Number and street or R. F. D. route)

Bx.-NY

(City, town, or village)

(Zone)

(County)

(State)

SELECTIVE SERVICE

LOCAL BOARD

1910 AMER. AVE.

BRONX 57, NEW YORK
(STAMP OF LOCAL BOARD)

NOTICE TO REGISTRANT

You are required by the Selective Service Regulations to fill out this questionnaire truthfully and to return it to

Statements in this questionnaire are confidential as prescribed in the Regulations

(P.53)

USE INK OR TYPEWRITER IN FILLING OUT THIS FORM

STATEMENTS OF THE REGISTRANT

Series I.—IDENTIFICATION

INSTRUCTIONS.—Every registrant shall complete all statements in this series.

1. My name is (print) LESTER PACKER
(Last) (First) (Middle)
2. In addition to the name given above, I have also been known by the name or names of _____
(If none, write "None")
3. My address now is 1478 WALTON AVE
(City, town, or village) (Zone) (County) (State)
(Number and street or R. F. D. route)
4. My telephone number now is NONE
(Town) (Exchange) (Number) (If you have no phone, write "None.")
5. My Social Security number is 065-22-8327
(If none, write "None")

Series II.—PRESENT MEMBERS OF ARMED FORCES

INSTRUCTIONS.—Every registrant who is a member of one or more of the groups named in this series shall supply the information called for under the appropriate item or items.

1. (a) I am at present on ACTIVE DUTY in the Armed Forces, the Coast Guard, the Coast and Geodetic Survey,

Note

For lower portion of this
page see next frame.

Series II.—PRESENT MEMBERS OF ARMED FORCES

INSTRUCTIONS.—Every registrant who is a member of one or more of the groups named in this series shall supply the information called for under the appropriate item or items.

1. (a) I am at present on ACTIVE DUTY in the Armed Forces, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service as a _____ in the _____
(Grade, rank, or rating) (Branch of Armed Forces)

(b) Service or serial number _____ (c) I entered on active duty _____
(Date)

(d) My present tour of active duty will terminate _____
(Date)

2. (a) I am at present a member of a reserve component of the Armed Forces, NOT ON ACTIVE DUTY as a _____ in the _____
(Grade, rank, or rating) (Branch of Armed Forces)

(b) I entered into such component on _____
(Date)

(c) I _____ performing service in such component by satisfactorily participating in scheduled drills and
(am, am not) training periods as prescribed by the Secretary of Defense.

3. (a) I am at present (check appropriate box) enrolled in the advanced course, senior division, Reserve Officers' Training Corps ☐ or the Air Reserve Officers' Training Corps ☐; a member of the Naval Reserve Officers' Training Corps entered upon the junior or senior year ☐; a midshipman, United States Naval Reserve ☐; in the _____
(College or university)

(b) I acquired such status on _____
(Date)

4. (a) I am selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps ☐; the Air Reserve Officers' Training Corps ☐; the Naval Reserve Officers' Training Corps ☐; I am appointed a midshipman, United States Naval Reserve ☐; and I have agreed in writing to accept a commission if tendered and to serve, subject to call by the Secretary of the Army, the Secretary of the Air Force, or the Secretary of the Navy, not less than 2 years on active duty after receipt of a commission.

(b) I was selected on _____ (c) The above agreement was signed _____
(Date) (Date)

- (P. 54)
5. I am a fully qualified and accepted aviation cadet applicant of the (check appropriate box) Army ☐; Navy ☐; Air Force ☐; and have signed an agreement of service for a period commencing on _____ (Date) and ending _____ (Date)

Series III.—PRIOR MILITARY SERVICE

INSTRUCTIONS.—Every registrant who has been on active duty as a member of the Armed Forces of the United States, the Coast Guard, the Public Health Service on active duty with the Armed Forces or the Coast Guard, or the armed forces of an allied country, shall complete the statements in this series. (Use a separate line for each term of service, listing last service first. If none, write "None.")

1. Branch of Armed Forces (Last service)	Date of Entry Into Active Service (Month, Day, Year)	Date of Separation From Active Service (Month, Day, Year)	Type of Discharge (Honorable, Dishonorable, Bad Conduct, Undesirable, or other—Specify)
None			

2. Does service shown in Item 1 above include any time spent in attending any of the specialized or college training programs under the jurisdiction of the Army, Navy, Marine Corps, or Coast Guard; or as a cadet, or midshipman in one of the armed service academies? Yes ☐; No ☒.
3. If your answer to Question 2 is "Yes," give the name of the program _____ date of entry _____ (Month) (Day) (Year) and date of release _____ (Month) (Day) (Year) from such specialized training or academy.

Series IV.—OFFICIALS DEFERRED BY LAW

1. I am at present the Governor of a State, Territory, or Possession; a public official chosen by the voters of an entire State, Territory, or Possession; a member of the legislative body of the United States or of a State, Territory, or Possession; a judge of a court of record of the United States or of a State, Territory, or Possession or the District of Columbia; my office is _____ (If none, write "None")
2. My term of office expires _____ (Date)

Series V.—SOLE SURVIVING SON

I AM NOT the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.
(am, am not)

Series VI.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

INSTRUCTIONS.—Every registrant who is a minister or a student preparing for the ministry shall complete the statements in this series that apply to him.

1. (a) I _____ a minister of religion. (b) I _____ regularly serve as a minister.

2. My term of office expires _____ (Date)

Series V.—SOLE SURVIVING SON

I AM NOT the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.
(am, am not)

Series VI.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

INSTRUCTIONS.—Every registrant who is a minister or a student preparing for the ministry shall complete the statements in this series that apply to him.

1. (a) I _____ a minister of religion. (b) I _____ regularly serve as a minister.
(am, am not) (do, do not)

(c) I have been a minister of the _____ since _____
(Name of sect or denomination) (Month) (Day) (Year)

(d) I _____ been formally ordained. (e) If so, my ordination was performed on _____
(have, have not) (Month) (Day) (Year)

by _____ at _____
(Ecclesiastical official performing the ordination) (City and State)

2. (a) I _____ a student preparing for the ministry under the direction of _____
(am, am not)

_____ in a theological or divinity school.
(Name of church or religious organization)

(b) I am attending the _____
(Name of theological or divinity school)

located at _____

3. I _____ a student preparing for the ministry under the direction of _____
(am, am not)

_____ pursuing a full time course of instruction leading to my entrance into _____
(Name of church or religious organization) (Name of theological or divinity school)

located at _____, in which I have been pre-enrolled.

Series VII.—FAMILY STATUS AND DEPENDENTS

INSTRUCTIONS.—Every registrant shall complete this series.

1. (a) I have never been married ☒; I am a widower ☐; I am divorced ☐; I am married ☐. (b) I ☐ (do, do not) live with my wife; if not, her address is _____

(c) We were married at _____ (Place) on _____ (Date)

2. (a) I have none children under 18 years of age.
(Number) (If none, write "None")

(b) Of these children, _____ live with me in my home.
(Number)

3. I have no persons other than those shown above, wholly or partially dependent upon me for support.
(Number)

NOTE.—Every registrant should submit to the local board on a separate sheet attached to this questionnaire any additional information concerning his status with respect to persons dependent upon him for support which he believes should be considered by the local board.

Series VIII.—PRESENT OCCUPATION

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated.

- (a) I am now working on a farm, orchard, or ranch. ☐ { If this box is checked, complete Series IX.
(b) I am now working in a nonagricultural occupation. ☐ { If this box is checked, complete this series.
(c) I am now a full-time student. ☐ { If this box is checked, complete Series XI.
(d) I now have no employment nor am I a full-time student. ☐ { If this box is checked, complete Parts 7 and 8 of this series.

2. The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

MILLINERY Buyer

3. I do the following kind of work in my present job (Be specific. Give a brief statement of your duties.):

PURCHASE MILLINERY SUPPLIES

4. In my present job, I am (Check one box only) —

(a) A regular or permanent employee, working for salary, wages, commission, or other compensation ☒;

2. The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

MILLINERY Buyer

3. I do the following kind of work in my present job (Be specific. Give a brief statement of your duties.):

PURCHASE MILLINERY SUPPLIES

4. In my present job, I am (Check one box only) —

(a) A regular or permanent employee, working for salary, wages, commission, or other compensation ☒;

I have worked 4 1/2 years in my present trade, and I do expect to continue indefinitely in it.
(do, do not)

(b) A temporary or occasional employee ☐; I expect that my present job will end about _____ (Date)

(c) An apprentice under a written or oral agreement with my employer, which expires _____ (Date) ☐.

(d) An independent worker, working on my own account, not hired by anyone, and not hiring any help ☐.

(e) Working for my father or for the head of my family, but receiving no pay ☐.

(f) An employer or proprietor hiring _____ paid workers ☐.

5. My employer is CHARLES & BECK INC.

(Name of organization or proprietor, not foreman or supervisor; write "Self" if self-employed)

20 W. 57 ST.

(Address or place of employment—Street, or R. F. D. Route, City, and State)

whose business is

MILLINERY MANUFACTURER

(Nature of business, service rendered, or chief product)

6. (a) I was employed by present employer on SEPT 1944

(Date)

(b) I entered job described in Statements 2 and 3, this series, on SEPT 44

(Date)

(P.56)

(c) I am paid at the rate of \$ _____ per hour ☐; day ☐; week ☐; month ☐.
(Check appropriate box)

(d) I work an average of _____ hours per week.

7. Other business or work in which I am now engaged is _____
(Nature of business; if none, write "None")

8. Prior work experience _____

NOTE.—You may attach to this page a statement giving additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification.

Series IX.—AGRICULTURAL OCCUPATION

INSTRUCTIONS.—Every registrant who works on a farm, orchard, or ranch shall complete this series.

1. I work on or operate a farm, orchard, or ranch as (Check appropriate boxes)—
(a) Sole owner-operator of the farm ☐

(b) Joint owner-operator with _____
(Name) (Address) ☐

(c) Hired manager for _____
(Name) (Address) ☐

(d) Cash tenant or renter ☐ } My agreement with _____
(e) Standing rent tenant ☐ } (Name of landlord)

(f) Share cropper ☐ } expires _____
(g) Share tenant ☐ } (Month) (Day) (Year)

(h) Wage hand (hired man) ☐ _____
(i) Unpaid family worker ☐ (Name and address of employer)

2. I have been engaged in farm work continuously since _____ 3. I _____ live on the farm where I work.
(Date) (do, do not)

4. I _____ actually and personally responsible for the operation of the farm where I work.
(am, am not)

5. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm

2. I have been engaged in farm work continuously since _____ 3. I _____ live on the farm where I work.
(Date) (do, do not)

4. I _____ actually and personally responsible for the operation of the farm where I work.
(am, am not)

5. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm

6. Total value of products sold from this farm during the last crop year \$ _____

7. Principal products marketed during the last two years _____

8. The number of year-round workers on this farm is _____ of whom _____ are hired hands.
(Number) (Number)

9. I am paid at the rate of \$ _____ per hour ☐; day ☐; week ☐; month ☐.
(Check appropriate box)

10. Other facts which I consider necessary to present fairly the farming or farm work I have described and my connection with it as a ground for classification are (if none, write "None") _____

11. Other business or work in which I am now engaged _____
(Nature of business; if none, write "None")

12. Prior work experience _____

NOTE.—You may attach to this page a statement giving any additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification.

(P. 57)

Series X.—EDUCATION

1. I have completed 7 years of elementary school, 3 years of junior high school, and 3 1/2 years of high school.
(Number) (Number) (Number)

2. I was graduated from high school.
(was, was not)

3. I have had the following schooling other than elementary and high school (if none, write "None"):

Name of College, University, Preparatory, Trade or Business School	Course of Study	Length of Time Attended, Degrees or Certificates Granted
C.C.N.Y.	MERCHANDISING	

Series XI.—STUDENTS

INSTRUCTIONS.—Every registrant who is a full-time high school or college student, except those who have completed Series VI above, shall complete this series. A student who believes that he should be placed in a deferred class because of his student status should file with the local board the necessary supporting evidence.

1. (a) I am a full-time student at _____
(Name of institution)

located at _____, majoring in _____

preparing for _____
(Occupation or profession)

(b) I expect to receive from this institution a _____
(Kind of certificate, diploma, or degree; if none, write "None")

on _____
(Date)

Note

For lower portion of this page see next frame.

preparing for _____
(Occupation or profession)

(b) I expect to receive from this institution a _____
(Kind of certificate, diploma, or degree; if none, write "None")

on _____
(Date)

(c) I intend to take an examination for license in _____ on _____
(Profession) (If none, write "None") (Date)

Series XII.—CITIZENSHIP

INSTRUCTIONS.—Every registrant shall complete the statements numbered 1, 2, 3, and 4 in this series. Every registrant who is not a citizen of the United States shall also complete the statement numbered 5 when applicable.

1. I was born at New York City N.Y. on 4/4/29
(Town or county) (State) (Country) (Date)

2. My race is White ☒; Negro ☐; Oriental ☐; Indian ☐; Other ☐ _____
(Specify)

3. I am a citizen or subject of U.S. 4. I _____ filed a Declaration of Intention
(Country) (have, have not)
to become a citizen of the United States.

5. I filed my Declaration of Intention at _____ on _____ under No. _____
(City) (State) (Month) (Day) (Year)

Series XIII.—COURT RECORD

INSTRUCTIONS.—Every registrant shall complete this series.

1. I have been convicted of crimes, other than minor traffic violations, as recorded below; if none, write "None."
List all convictions, last conviction first.

Offense	Date of Conviction (Month, Day, Year)	Court. (Name and Location)	Sentence
(Last conviction) <u>None</u>			

2. I am not now being retained in the custody of a court of criminal jurisdiction, or other civil authority.
(am, am not)

Specify _____
(Awaiting trial, on parole, etc.)

(6)

— 10 — 35764-1

NOTICE TO REGISTRANT

You are required by the Selective Service Regulations to fill out this questionnaire truthfully and to return it to this local board on or before the date shown below. Willful failure to do so is punishable by fine and imprisonment.

THIS QUESTIONNAIRE MUST BE RETURNED ON OR BEFORE 7-29-49

Joe Drumm
Clerk or Member of Local Board.

(The above items are to be filled in by the local board before the questionnaire is mailed to the registrant.)

INSTRUCTIONS

This questionnaire is intended to furnish the local board with information to enable it to classify you. You will receive notice from your local board of your classification.

The registrant is required to sign the certificate on page 7. If another person assists the registrant in completing this questionnaire, the person assisting is required to complete the statement following the registrant's certificate. Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making, or being a party to the making, of any false statement or certificate regarding or bearing upon a classification.

If the registrant is an inmate of an institution and is unable to complete the questionnaire, the executive head of the institution shall communicate these facts immediately to the local board.

1. Make no alterations in the printed matter in this questionnaire.

2. All spaces in this questionnaire that apply to registrants must be completed with the appropriate words or check marks.

3. If you furnish additional information or affidavits with your questionnaire, attach the same securely to it.

4. If you are now on active duty with the Armed Forces, obtain a certificate to that effect from your commanding officer. Execute only Series I and II of the questionnaire and return it, with certificate attached, to your local board.

5. After this questionnaire has been returned, report to your local board at once any change of address, any change in place of employment or occupation, or any other new fact which may affect your classification.

Series XIV.—CONSCIENTIOUS OBJECTION TO WAR

(P, 58)

INSTRUCTIONS.—Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form shall sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board.

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

(Signature)

Series XV.—PHYSICAL CONDITION

INSTRUCTIONS.—Every registrant shall complete this series. Any registrant who answers any of the questions listed below by "Yes" and who believes himself physically disqualified for service in the Armed Forces may attach an affidavit from his physician, hospital, or sanatorium to support his claim.

1. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? Yes ☐; No ☒.
2. If the answer to Question 1 is "Yes," state the condition from which you are suffering _____
3. Are you now, or have you ever been, an inmate or a patient in a mental hospital or institution? Yes ☐; No ☒.
4. Are you now, or have you ever been, an inmate or a patient in a tuberculosis hospital or sanatorium? Yes ☐; No ☒.
5. If the answer to Question 3 or Question 4 is "Yes," give the name and address of each hospital, institution, or sanatorium _____
6. Have you had treatment from a physician for any condition within the last 5 years? Yes ☐; No ☒.
7. If the answer to Question 6 is "Yes," state each condition from which you suffered and give the name and address of the physician who attended you, and dates of each treatment _____

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS.—It is optional with registrant whether or not he completes this statement, and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine the classification of the registrant on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class _____

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant shall make the registrant's certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

determine the classification of the registrant on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class _____

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant shall make the registrant's certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, Lester Tucker, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing _____ in my own handwriting.

Registrant sign here

(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because _____

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(P.59)

(Registrants Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board	Vote	
		Yes	No
8/29/49	Form m. reg. to give info. to comp. quest.		
9/2/49	Form m. reg. giving info.		
9/28/49	Class I A 468 (B) - FHS	3	0
10/20/49	9.110 a.e. m. reg		
9/27/50	Form m. reg.		
10/9/50	Form m. reg.		
10/23/50	F.150 SENT (CONS. OBJECTOR) PER LETTER 10/20/50		
10/31/50	F.150 REC. ATTACHED.		
11/1/50	classification unchanged		
11/1/50	reg advised class unchanged.		
11/9/50	SEE LETTER REQUEST HEARING ATTACHED		
11/1/50	reg advised hearing requested		
11/17/50	12/6/50		
11/22/50	file sent to Mj. Akst. per telephone conv. of 11/22/50		
11/27/50	FILE RETURNED - SUGGEST CANCE. OF INDUCTION FOR DEC. 6 th AND CASE SENT TO APPEAL BOARD.		
12/6/50	board & A.A. reviewed file		

11/1/50	reg advised hearing requested		
11/17/50	12/6/50		
11/22/50	file sent to Mj. Akst. per telephone conv. of 11/22/50.		
11/27/50	FILE RETURNED - SUGGEST CANCE. OF INDUCTION FOR DEC. 6 th AND CASE SENT TO APPEAL BOARD.		
12/6/50	board & A.A. reviewed file		
12/6/50	sent to Board of Appeals		
JAN 1 1951	Appeal Board Panel No. 4 has reviewed the record and determined that the registrant is not entitled to classification in Class IV-E and is not eligible for classification in a class lower than Class IV-E and has directed that file be transmitted to the Dept. of Justice for an advisory recommendation, pursuant to Section 1626.25 (a)(4) S.S.R.		
8/13/51	ret from appeal board		
8/14/51	From - IA - 4-0.		
8/30/51	Form m. 9/14/51.		
9/1/51	Rec'd copy of letter Reg sent to Mr. Newby		
9/6/51	reg advised Ind. not made		
9/10/51	per letter, own work not begun - reg advised		

(P. 60)

FO. 88-29-188

GOVERNMENT 7

GOVERNMENT

2A.

EXHIBIT

U. S. Dist. Court

S. D. of N. Y.

MAR 26 1952

To be used to provide additional pages of SSS Form No. 100 when more space is required for recording
"Minutes of Actions by Local Board and Appeal Board."

III

If we are to examine this in light of today's problem we find that we are living in a cynical age where international morality has never sunk so low. Where men are preparing to participate in acts of violence inviting mutual disaster.

Recognizing that those among us who urge preparation of war and war itself do this on what they consider to be moral reasons. I however believe the achievements of these minor good ends does not justify wholesale and indiscriminate slaughter of human life and destruction of war.

95

GOVERNMENT'S EXHIBIT 2-B

Selective Service
Local Board No. 22
1910 Arthur Avenue,
Bronx 57, New York

August 29, 1949.

PACKER, LESTER,
50-22-29-188 Pdg. file.

Please Answer the Following Questions Where Marked With Red Pencil and Return in Stamped Envelope Enclosed:

1. Have you had prior Military Service? No.
 2. Are you a member of the National Guard or any reserve? No.
 3. Are you the sole surviving son of a family of which one or more sons or daughters were killed in action? No.
 4. Have you any dependents under 18 years of age? No.
 5. Have you any dependents over 18 years of age, wholly or partially dependent upon you for support? No. If so, give relationship? —
 6. Have you ever been convicted of crime other than minor traffic violation? No.
 7. Are you under the custody of any court at the present time? No.
 8. Single or Married? Single.
 9. Have you any physical or mental condition which in your opinion will disqualify you from service in the Armed Forces? —
- Date of Birth: 4/4/29.

Signature: (Signed) LESTER PACKER.

96

GOVERNMENT'S EXHIBIT 2-E

Oct. 20, 1950.

Dear Sirs:

After long and careful deliberation, I have reached the conclusion that I am opposed to war in all forms and therefore request that I be put in the classification 4/E and that I be sent special form 150, for conscientious objectors.

Very truly yours,

(Sgd.) LESTER PACKER,
Selective Svc. 550-22-29-188.

#

I believe that no man has
the right to take the life of
another human being regardless
of circumstance. We are put on
earth by the will of God and
by the will of God shall we depart.

OCT 31 1950

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. 50 22 29 188

SELECTIVE SERVICE
LOCAL BOARD NO. 22
8910 Arthur Avenue
Bronx 57, N.Y.

(LOCAL BOARD STAMP)

Name **Packer** **Lester**
(Last) (First) (Middle)
Address **1478 Walton Avenue**
(Number and street or R. F. D. route)
Bronx, New York
(City, town, or village) (County) (State)

This form must be returned on or before **October 30, 1950**
(Five days after date of mailing or issue)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service. I understand that if my claim is sustained I will be inducted into the armed forces but will be assigned to noncombatant service as defined by the President.

(Signature of registrant)

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service. I understand that if my claim is sustained I will be inducted into the armed forces but will be assigned to noncombatant service as defined by the President.

(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to noncombatant service in the armed forces, be exempted as provided in Section 6 (j) of the Selective Service Act of 1948.

(Signature of registrant)

Series II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ☒ No ☐

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

Answer to question 2 and 3 will be found on attached paper pages from 1-3

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

Answer on attached white sheet

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

My religious guidance is the dictates of my conscience

5. Under what circumstances, if any, do you believe in the use of force?

I am not opposed to the use of force. The use of moral force for the purpose of restraint. I do not oppose the use of certain types of physical force such as that used in institutions (mental). I am not opposed to a police force for the purpose of restraint. I am however opposed to violence, namely the organized killing of one group by another with all the profound subordination of society which such organization entails.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

I have always tried to maintain as high a standard of moral behavior as possible. I have never been arrested for violating any laws. I have never done anyone harm to the best of my memory. I have always tried to maintain a high standard of character as can be verified by those who are acquainted with me.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

I have never given public expression to my claims written or oral. I have never printed it.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

NAME OF SCHOOL	TYPE OF SCHOOL	LOCATION OF SCHOOL	DATES ATTENDED	
			From	To
Public School 64	P.S.	170 St. + WALTON AVE	1935	1941
W.M. H. TART H.S.	H.S.	172 St. + MORRIS AVE	1944	1946
J.H.S. WADE	J.H.S.	128 St. + WALTON AVE	1947	1948
DALE CARPENTERS' INDIAN HUMAN RELATIONS	TRAINING	143 St.	1949	1949
ZION METHODIST SCHOOL	RELIGIOUS	172 St. + WALTON AVE	1948	1949

I have never done anyone harm to the best of my memory. I have always tried to maintain a high standard of character as can be verified by those who are acquainted with me.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

I have never given public expression to my claims written or oral. I have never printed it.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

NAME OF SCHOOL	TYPE OF SCHOOL	LOCATION OF SCHOOL	DATES ATTENDED	
			From	To
PUBLIC SCHOOL 64	P.S.	170 St. + WALTON AVE	1935	1941
W.M. H. TART H.S.	H.S.	172 St. + MORRIS AVE	1944	1946
J.H.S. WADE	J.H.S.	128 St. + WALTON AVE	1947	1948
DALE CARPENTERS' INDIAN HUMAN RELATIONS	TRAINING	143 St.	1949	1949
ZION METHODIST SCHOOL	RELIGIOUS	172 St. + WALTON AVE	1948	1949

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

TYPE OF WORK	NAME OF EMPLOYER	ADDRESS OF EMPLOYER	PERIOD WORKED	
			From	To
MILLINERY	GLADYS + BELLE INC	20 W. 37 St.	1944	1950
MERC. BUYER			19	19
			19	19
			19	19
			19	19
			19	19

3. Give all addresses and dates of residence where you have formerly lived.

NAME OF CITY, TOWN, OR VILLAGE	STATE OR FOREIGN COUNTRY	STREET ADDRESS OR R. F. D. ROUTE	DATES OF RESIDENCE	
			From—	To—
NEW YORK CITY	N.Y.	1478 WALTON AVE	1929	1950
			19	19
			19	19
			19	19
			19	19
			19	19

4. Give the name and address of your parents and indicate whether they are living or not.

Max Zucker 1478 Walton Ave Bx 52 N.Y.
 Kate Zucker " " " " " "

5 (a) State the religious denomination or sect of your father

(b) State the religious denomination or sect of your mother

Jewish
 Jewish

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment?—If so, state the name and address of same and give reasons why you became a member.

I have never been a member of any military organization

2. Are you a member of a religious sect or organization? (a) through (e):

No
 (Yes or no)

If your answer to question 2 is "yes," answer questions

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

2. Are you a member of a religious sect or organization? (a) through (e):

No
 (Yes or no)

If your answer to question 2 is "yes," answer questions

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

I have never been affiliated with any organization military political labor or otherwise

Statement to Questions #2, 3

OCT 31 1930

I do not know whether my code of morals will be considered of a religious nature although I believe in a Supreme Being. This code however may very well stem from this Supreme Being. I had received a brief religious training in my early years, such as the study of the ten commandments and religious prayer which has a definite moral significance. This training has probably had a definite bearing on my subconscious. My training also includes that given me by my parents such as moral behavior in relation to society. These moral codes to

I

to which I adhere is I believe
inherited in my nature as in
other peoples nature. It is a
part of this Super Natural force.
Perhaps my belief can best be
stated in the words of Mencius
the immortal Chinese Philosopher
when he said. Human nature is
good. If men become evil it is
not the fault of their original
endowment. The sense of mercy
is found in all men, the sense
of respect is found in all men,
the sense of shame is found
in all men, the sense of right
and wrong is found in all men.

(P. 70)

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU
ARTHUR MILLER	1925 HARRISON AVE	ASSN. BUYER	FRIEND

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, Lester Packie, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are in my own handwriting.

(are, are not)

Registrant sign here

(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example—registrant unable to read and write English, etc.)

(are, are not)

Registrant sign here

(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

III

The sense of mercy is what we call benevolence or charity. The sense of shame is what we call righteousness. The sense of respect is what we call propriety. The sense of right and wrong is what we call moral consciousness.

Charity, righteousness, propriety and moral consciousness are not something that is drilled into us.

The fact is we often forget them, neglect them or ignore them. This moral consciousness is developed in different persons to varying degrees. The reason being being some people do not develop to the full extent what is in them.

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GOVERNMENT'S EXHIBIT 2-G

November 2, 1950.

Mr. LESTER PACKER, 50-22-29-188,
1478 Walton Avenue,
Bronx, New York.

Dear Sir:

After reviewing your case on November 1, 1950 the board has decided that the facts submitted does not warrant a re-opening of your classification.

Yours truly,

HELEN MIDDLEDITCH,
Clerk.

107

GOVERNMENT'S EXHIBIT 2-H

Nov. 7, 1950.

Dear Sirs:

I am in receipt of your letter of Nov. 2. It has been brought to my attention that I am no longer eligible to appeal for a hearing.

Although I recognize that I do not have the legal right to a hearing due to the lapse in time since registration I do however feel I should be allowed the opportunity of a hearing in as much as I had been unaware of my right to appeal after this extended period of time. I feel that if I am allowed the opportunity to present my case personally before the hearing officer, it will enable you to have a clearer and more comprehensive picture of the entire case.

I shall also welcome a thorough investigation by the F. B. I. so that all the details may be entered into the record.

I hope the board will allow me favorable consideration in view of the fact that I had been unaware of the procedure in making an appeal.

Very Sincerely,

(Sgd.) LESTER PACKER,
Selective Ser. #50-22-29-188.

Interview Refused. RJB. 11/15/50.

November 16, 1950.

Mr. LESTER PACKER, SS No. 50-22-29-188,
1478 Walton Avenue,
Bronx, New York.

Dear Sir:

The board reviewed your case on November 15, 1950 and it was their decision that your request for an interview is denied.

Yours truly,

HELEN MIDDLEDITCH,

Clerk.

New York City Headquarters
Selective Service System
350 Fifth Avenue
New York 1, N. Y.

Refer to File

10-12-ss

November 24th, 1950.

Selective Service System

Local Board No. 22

1910 Arthur Avenue

Bronx, N. Y.

Re: Lester Packer

50-22-29-188

GENTLEMEN:

The Cover Sheet of the above named registrant is herewith returned. Examination of the facts contained therein discloses no irregularity on the part of the Local Board in its classification of the registrant. It has always been the practice of this Headquarters to permit all registrants who claim to be Conscientious Objectors to have their cases appealed to the Appeal Board, and possibly thereafter be forwarded to the United States Attorney for consideration by the Hearing Officer. This is done so that all registrants who claim to be Conscientious Objectors may be processed in the same way and be afforded all their rights, which may have lapsed or not, before any final determination is made in their case.

Even though the registrant failed to sign Series 14 of the Questionnaire referring to Conscientious Objectors, the file does disclose that the Board, during October, did supply the registrant with Special

Form for Conscientious Objector (SSS Form 150) which he completed and returned to the Local Board on October 31st, 1950. This may be considered indicative on the part of the Local Board to re-open and reconsider the registrant's claim anew. If this could be considered a reopening, then pursuant to the Regulations the registrant should have been mailed a new Notice of Classification (SSS Form No. 110) and thereafter his rights to appeal could have been extended an additional ten days.

Rather than sending out a new SSS Form No. 116 at this time, it is suggested that his Notice of Induction be cancelled and that his case be sent to the Appeal Board on the question of his objection to combatant and non-combatant duty as a Conscientious Objector. Since the records indicate that he is to Report for Induction on December 6th, it is requested that you advise this office before that date as to what action is taken by your Board.

Sincerely yours,

(Signed) CANDLER COBB,
New York City Director.

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GOVERNMENT'S EXHIBIT 2-L

December 5, 1950.

Mr. Lester Packer
1478 Walton Avenue
Bronx, New York

SS No. 50-22-29-188

DEAR SIR:

This is to advise you that your Induction schedules for December 6, 1950 has been cancelled until further notice.

Yours truly,

HELEN MIDDLEDITCH,
Clerk.

Appeal Board
Panel No. 4
350 Fifth Avenue
New York 1, N. Y.

January 16, 1951.

Honorable Irving H. [redacted] pol
United States Attorney
Southern District of New York
United States Court House
New York 7, N. Y.

Re: Lester Packer
50-22-29-188
Local Board No. 22

SIR:

Pursuant to Section 1626.25 (a) (4) of the Selective Service Regulations, we transmit herewith, for the advisory recommendation of the Department of Justice, file in the case of the above named registrant who claims that he is, by reason of religious training and belief, conscientiously opposed to participation in any form in war, and in both combatant and noncombatant training and service in the armed forces.

Appeal Board Panel No. 4 has reviewed the file and determined that the registrant is not entitled to classification in Class IV-E and is not eligible for classification in a class lower than Class IV-E.

Respectfully,

(Signed) VITO F. LANZA,
Chairman.

Enclosure

CC: Selective Service Headquarters
Local Board No. 22 (Bronx).

4/29/51

DEAR MR. DYKMAN:

I am in receipt of a notice for a hearing to be held on May 7 at 9:30 A.M.

I would appreciate your notifying me as to the nature and char-

acter of any evidence which is unfavorable and tends to defeat my claim for exemption.

Thanking you for your kind efforts
I remain

Yours truly,

(Signed) LESTER PACKER.

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GOVERNMENT'S EXHIBIT 2-Q

Department of Justice
Office of the Deputy Attorney General
Washington

July 24, 1951

Chairman, Appeal Board Panel No. 4
Selective Service System
350 Fifth Avenue
New York 1, New York

Re: Lester Packer
Selective Service No.
50-22-29-188
Local Board No. 22
Bronx, New York

DEAR SIR:

After review and examination of the entire file and record, the Department of Justice finds, as a matter of fact, that the conscientious objections of the above-named registrant are not sustained on the ground that he has failed to prove that such alleged objections are based upon deep-seated conscientious convictions arising from religious training and belief but that they are based upon philosophical or sociological grounds or upon a person moral code.

As required by Section 6(j) of the Selective Service Act of 1948, an inquiry was made in this case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable Jackson A. Dykman, Hearing Officer for the Southern and Eastern Districts of New York. His report is enclosed for consideration by your Board, this Department concurring in the recommendation he has made. There is also returned the Selective Service Cover Sheet in the above case.

Accordingly, the Department of Justice recommends to your Board that the registrant be not classified as a conscientious objector.

Yours sincerely,

(Signed) PEYTON FORD,
Deputy Attorney General.

GOVERNMENT'S EXHIBIT 2-R

SELECTIVE SERVICE SYSTEM

~~Appeal Board~~~~Panel No. 4~~

205 East 42nd Street

New York 17, N. Y.

(Local Board Stamp)

August 20, 1951.

Selective Service System

Local Board No. 22

881 Gerard Avenue

Bronx 52, New York

Subject: Lester Packer

SS No. 50 22 29 188

Dear Sirs:

After consideration of the Report of Hearing, and of Hearing Officer's recommendation, in which the Department of Justice concurred, that registrant's claim as a conscientious objector be denied, Appeal Board Panel No. 4 has this day classified registrant in Class I-A, by a vote of 4-0, thereby affirming the determination of the Local Board.

Cover-sheet in this case is returned herewith.

Yours sincerely,

(Signed) VITO F. LANZA, *Chairman.*

Enclosure

cc: Selective Service Headquarters

cc: Appeal Board Panel No. 2

GOVERNMENT'S EXHIBIT 2-T

Aug. 30, 1951.

General Lewis B. Hershey,

Division of Selective Svc.

Washington, D.C.

Dear Sir:

I am in receipt of a notice of classification from my appeal board reclassifying me in 1A.

I had registered a claim with my local board for a 4E exemption as a conscientious objector. Consequently, I received a hearing with Hon. Col. A. Dykman of the Department of Justice. In rela-

tion to this hearing, there are certain unfavorable statements and recommendations made by Col. Dykman which I feel had not been entirely impartial.

Col. Dykman's report verified the fact that my parents are devout orthodox Jews, that I had received a formal religious training from the age of eight to thirteen whereupon I was confirmed. However, after a while I discontinued attendance at my church owing to the fact that I could never really go along with the ritual of my religion.

Col. Dykman states in his final analysis that I received religious training in a faith that is not opposed to military service and it is quite speculative to assume such training forms the basis of unwillingness to participate in war in all forms and that I had failed to establish, by sufficient evidence that my opposition to war arises from religious training and belief.

117 Although I acknowledge the fact that I no longer accept the ritual of my religion and that perhaps I am no longer a formal member of this sect, I most strongly accept its basic concepts. It is wrong and quite objectionable for Col. Dykman to state that this religion is not of a pacifist nature. There are many pacifists who are Jewish. One need not look far to see that a basic tenant of Judaism is the commandment Thou Shalt Not Kill. A good portion of the Old Testament deals with the pacifist gospels of the old prophets Isaiah, Jeremiah and Micah who were vehemently opposed to the use of violent means.

I feel I am being penalized most unjustly because of the training I received from this religious sect. Furthermore, if Col. Dykman questions the validity and sincerity of my belief, I might add that my particular principles of religion are a subject of accountability to my God alone.

I therefore request that you intervene in my behalf and postpone any further action that might be taken by my local board until you have restudied the entire case. I am confident that upon reviewing my case once more, I will be given the exemption I have requested.

Very truly yours,

(Signed) LESTER PACKER,

S.S. #50-22-29-188,

1478 Walton Ave.,

Bronx, N. Y.

P.S. I have a minor grievance relating to a question at the hearing. I was asked how long I have held these views and when I became aware of them. I had been misquoted. I stated "that my

118 belief had not been developed within me but was inherent
in my nature as in other people's nature and that I have
become increasingly aware of it".

Selective Service System

Local Board 22

881 Gerard Ave.

Bronx 52, N.Y.

(Written on left margin of first page)

9/5/51

Contents noted.

No comment, except that this reg't is obviously trying to beat
the draft.

Induction stands.

DLD

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GOVERNMENT'S EXHIBIT 2-U

September 6, 1951.

Mr. Lester Packer, 50-22-29-188

1478 Walton Ave.,

Bronx, N. Y.

Dear Sir:

This is to advise you that the board reviewed your letter of
August 30, 1951, and it is their decision that your classification
remain unchanged and that you are to report for Induction on
September 14, 1951 as scheduled.

Yours truly,

HELEN MIDDLEDITCH, Clerk.

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GOVERNMENT'S EXHIBIT 2-V

New York City Headquarters
SELECTIVE SERVICE SYSTEM
205 East 42nd Street
New York 17, New York

September 6, 1951.

10:kh

Mr. Lester Packer
1478 Walton Avenue
Bronx, New York

SS No. 50-22-29-188

Dear Mr. PACKER:

This will acknowledge receipt of your Special Delivery, Registered letter dated August 31, 1951, which I received this morning.

You must bear in mind that your case has been before me since last November, which means that I am entirely familiar with the progress of your classification. However, I have again today reviewed the proceedings held on your behalf.

I do not feel there is any reason for me to intervene in your case. You have had all of your procedural rights according to the Law and Regulations and your classification of 1-A was unanimously confirmed by the Appeal Board. Your order for induction will therefore stand for September 14, 1951.

Sincerely yours,

CANDLER COBB,
New York City Director.

cc: L. B. 22

National Headquarters
Selective Service System
1712 G Street, Northwest
Washington 25, D. C.

In Replying Address: The Director of Selective Service and Refer
to No. 6-70-5.

Director of Selective Service
for New York City,
11th Floor, 205 East 42nd Street,
New York 17, New York.

Subject: Lester Packer, SS No. 50-22-29-188, Local Board No. 22,
881 Gerard Avenue, Bronx 52, New York.

Dear Colonel Cobb:

It is requested that the cover sheet for the above named registrant
be forwarded to this Headquarters for review.

For the Director, LEWIS F. KOSCH,
Colonel, Artillery,
Chief, Manpower Division.

New York City Headquarters
Selective Service System
205 East 42nd Street
New York 17, N. Y.

Refer to File 10-23-11

September 10, 1951.

Mr. DAVID L. DELMAN, *Chairman*,
Local Board 22,
881 Gerard Avenue,
Bronx, New York.

Subject: Lester Packer, SS No. 50 22 29 188

Dear Mr. Delman:

This will confirm our telephone conversation requesting the above
named subject's Cover Sheet for transmittal to National Head-
quarters for review. A copy of a letter from National Headquarters
is herewith attached.

Pending the review of this registrant's Cover Sheet by National Headquarters, his induction scheduled for September 14 should be postponed.

Sincerely yours,

(Signed) CANDLER COBB,
New York City Director.

Enc.

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GOVERNMENT'S EXHIBIT 2-Y
New York City Headquarters
Selective Service System
205 East Forty-Second Street
New York 17, N. Y.

Refer to File 10:cjb

October 8, 1951.

Mr. David L. Delman,
Chairman, Local Board No. 22
881 Gerard Avenue,
Bronx 52, New York.

Re: Lester Packer, SS No. 50-22-29-188

Dear Mr. Delman:

We herewith return the cover sheet of the above-named registrant together with a copy of the letter received by us from National Headquarters and copy of a letter dated October 3rd which National Headquarters wrote to the registrant.

Sincerely yours,

(Signed) CANDLER COBB,
New York City Director.

Enc.

124 National Headquarters
Selective Service System
1712 G Street, Northwest
Washington 25, D. C.

In Replying Address: The Director of Selective Service and Refer
to No. 6-70-5

Oct. 2, 1951.

Director of Selective Service
for New York City,
11th Floor, 205 East 42nd Street,
New York 17, New York.

Subject: Lester Packer, SS No. 50-22-29-188, Local Board No. 22,
881 Gerard Avenue, Bronx 52, New York

Dear Colonel Cobb:

We are returning herewith the cover sheet of the named registrant
forwarded for our review, pursuant to our request of September 6,
1951.

After examining the cover sheet, we are of the opinion that there
is no need for further action in this case in order to prevent injustice.

For the Director, LEWIS F. KOSCH,
Colonel, Artillery, Chief
Manpower Division.

Enclosure.

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National Headquarters
Selective Service System
1712 G Street,
Washington,
D. C.
6-70-5

October 3, 1951.

Mr. Lester Packer,
1478 Walton Avenue,
Bronx, New York.

Dear Mr. Packer:

This is to acknowledge receipt of your letter of August 30, 1951.
Upon receipt of your letter, we called in your Selective Service
file and after reviewing its contents, we believe that there is no need
for further action in your case in order to prevent injustice.

For the Director, LEWIS F. KOSCH,
Colonel, Artillery, Chief
Manpower Division.

cc: Dir. of SS for N. Y. C.
Copy.

Supreme Court of the United States

No. 573, October Term, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

LESTER PACKER

Order allowing certiorari

Filed March 16, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.